United States Court of Appeals

for the Second Circuit

APPENDIX

76-7579

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

NO. 76-7579

FIREBIRD SOCIETY, etc.,

Plaintiffs-Appellants

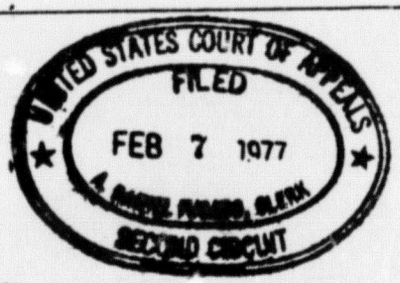
v.

MEMBERS OF THE BOARD OF FIRE COMMISSIONERS, etc.,

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

APPENDIX



PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

Docket Sheet	App. 1 - 6
Complaint	App. 7 - 28
Exhibits Annexed to Complaint	App. 29 - 50
Charge of Discrimination	App. 29 - 33
Affidavit of Richard Barrett	App. 34 - 39
Notice of Right to Sue	App. 40 - 41
Affidavit of George Sweeney	App. 42 - 46
Otis Employment Tests 2A	App. 47 - 50
Order of December 5, 1973	App. 51 - 57
Order of August 30, 1974	App. 58 - 66
Ruling on Motion to Intervene [66 F.R.D. 457 (1975)]	App. 67 - 76
Affidavit of Michael P. Koskoff	App. 77 - 85
Affidavit of David N. Rosen	App. 86 - 90
Time Schedule of Michael P. Koskoff	App. 91 - 94
Time Schedule of David N. Rosen	App. 95 - 100
Schedule of Expenses and Law Student Time	App. 101 - 103
Affidavit of Heidi Hartman	App. 104 - 115
Transcript of Application for Attorney Fees	App. 119 - 195
Testimony of Barry L. Goldstein	App. 119 - 147
Testimony of Jacob D. Zeldes	App. 148 - 160
Testimony of Earl D. Geyer	App. 161 - 171
Testimony of Walter Turning	App. 172 - 195
Ruling on Plaintiffs' Motion for Award of Counsel Fees and Costs	App. 196 - 201

ORIGINAL DOCKET SHEET MISSING

15876

App. 1

CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date:

Form No. 106 Rev.

ROBERT C. ZAMPANO

TITLE OF CASE	ATTORNEYS
FIREBIRD SOCIETY, ET AL v. MEMBERS OF THE BOARD OF FIRE COMMISSIONERS, ET AL and CITY OF NEW HAVEN	For plaintiff: Michael P. Koskoff 1241 Main Street Bridgeport, Conn. David N. Rosen 265 Church Street New Haven, Conn.
defendants (Cont'd.) eph D. Carrison rison & Kahn . Temple Street Haven, Conn.	For defendant: ~~Roger J. Frechette~~ (For: N.H. Bd. of Fire Commissioner et al) Corporation Counsel 161 Church Street New Haven, Conn. 06510 J. Daniel Sagarin (For Intervenors) 855 Main Street Bridgeport, Conn. W. Paul Flynn 132 Temple Street New Haven, Conn. Frank S. Meadow Asst. Corp. Counsel 161 Church Street ~~New Haven, Conn.~~ 06510

BEST COPY AVAILABLE

STATISTICAL RECORD	COSTS	DATE 1973	NAME OR RECEIPT NO.	REC.	DISB.
. 5 mailed	Clerk				
6 mailed	Marshal	1975 2/6	Schless & Sagarin		
sis of Action: Action brought pursuant to USC §§ 1981 and 1983 minority group aiming discrimination ~~plaintiffs~~ by defendants employment and promotions the New Haven Fire Dept. ks declaratory and injunc-ve relief and damages. E 23 ALLEGATION.	Docket fee		(Appeal)	5 00	
	Witness fees	2/7	Deposit: G.F.100869		5 00
	Depositions				

DATE	PROCEEDINGS	Date Order or Judgment
1973		
10/5	Complaint, Verification, Motion to Produce Documents, Plaintiff's First Interrogatories to Defendants, Brief in Support of Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunctions, filed.	
"	Appearances of Michael P. Koskoff and David Rosen, entered for plaintiffs.	
"	Temporary Restraining Order, to expire 10 days from date, entered. Zampano, J. M-10/2/73.	
"	Motion for Appointment of Sheriff Jacob G. Miller to Serve Process and Order thereon, filed and entered. Markowski, C. Copies to Attorney.	
"	Summons issued and together with copies of same and of complaint, motion, interrogatories, brief and attested copies of Temporary Restraining Order, handed to Attorney.	
10/15	Motion for Expedited Discovery, filed by plaintiffs.	
10/16	Preliminary Injunction, entered. Ordered that order of October 5, 1973 is extended until 5:00 P.M. Oct. 19, 1973 or further order of this court. Zampano, J. M-10/16/73 Copies to Attys Keyes, Koskoff and Rosen.	
10/29	Preliminary Injunction extended until November 12, 1973 at 5:00 P.M. or until further order of this Court. Zampano, J. M-10/30/73 Copies mailed.	
11/5	Dismissal of Action as to Defendant Grazioso, filed by plaintiffs.	
"	Hearing on Plaintiffs' Motion for Expedited Discovery "Over to 4:00 P.M. Chambers Conference." Zampano, J. M-11/7/73	
11/12	Preliminary Injunction entered extending order of October 5, 1973 (TRO) until Nov. 20, 1973 at 3:00 P.M. or further order of this court. Zampano, J. M-11/12/73 Copies mailed.	
12/3	Hearing held after chambers conference 3:00 P.M. to 5:45 P.M. Court will enter an order on Wed., December 5, 1973. Court indicates that same will not be a consent order. The details of the Order which have been revealed to counsel in chambers will not be disseminated by any of the attorneys until Court signs the order. Motion of W. Paul Flynn to Intervene was granted in chambers. Motion to Dismiss as to Attorney Grazioso individually is granted. Preliminary Injunction is extended to Wednesday, Dec. 5, 1973 at 5:00 P.M. Court adjourned at 6:00 P.M. Zampano, J. M-12/4/73	
12/5	In-Camera Agreement (sealed by Order of Court on December 5, 1973) Zampano, J., filed.	
"	Order, not agreed to but acquiesced in by all the parties, setting forth procedures to be followed, entered. Zampano, J. M-12/6/73 Copies mailed.	
12/7	Appearance of Thomas F. Keyes, Jr., entered for Defendants The New Haven Board of Fire Commissioners, et als	
12/10	Motion for an Order making the City of New Haven a party defendant herein and directing the issuance and service of process upon it, filed by Plaintiffs.	
"	Order entered making the City of New Haven a party defendant and directing Clerk to issue and serve process upon it. Order endorsed as follows: "Filed with Court on November 28, 1973 and service made upon City of New Haven by hand delivery to Attorney Keyes in Judge's Chambers." Zampano, J. M-12/11/73	
"	Motion for Attorneys' Fees, filed by Plaintiffs.	
1974		(Cont'd.)

C. 110 Rev. Civil Docket Continuation FIREBIRD SOCIETY, ET AL v. MEMBERS OF THE BOARD OF FIRE COMMISSIONERS, ET AL

DATE 1974	PROCEEDINGS	Date Order Judgment N
1/22	Amendment to Order [illegible]ember 5, 1973, entered. Paragraphs 14, 16, 17, 18 and 21 amended. Zampano, J. [illegible] Copies mailed.	
3/4	Order entered enjoining defendants, their agents, employees, etc. from making any assignments, promotions or appointments to the New Haven Department of Fire Services except with the consent of all parties, until further order of this Court, except that defendants may make assignments on a temporary acting basis. Zampano, J. M-3/4/74 Copies mailed.	
5/21	Order entered enjoining all parties, their officers, etc. from disclosing to any person any material relating to any individual's examination score, test rating, efficiency rating, standing on promotion lists, etc.; and that all copies of examination and efficiency rating scores and promotion lists presently under the control of any party or any of said party's officers, employees, agents or servants shall forthwith be turned over to counsel to that party. Zampano, J. M-5/21/74 Copies mailed.	
5/22	Defendants' Answer, filed.	
5/23	Placed on trial list.	
5/28	Motion for Order Compelling Discovery, filed by Plaintiffs.	
5/28	Informal Pre-Trial Conference scheduled for May 30, 1974, "Over to June 3, 1974 at 2:00 P.M." Zampano, J. M-5/28/74	
6/3	Motion for Extension of Time to Comply with Order for Disclosure with Affidavit of Thomas F. Keyes attached, filed by defendants.	
6/6/	Order entered on defendants' Motion for Extension of Time to Comply with Order for Disclosure to July 1, 1974 granting same. Zampano, J. M-6/6/74 Copies mailed.	
6/20	Interrogatories, filed by defendants.	
7/2	Answer to Motion to Produce, filed by defendants.	
7/3	Answers to Interrogatories, filed by defendants.	
7/15	Notice to Take Depositions of Francis J. Sweeney on July 18, 1974; Michael DePalma on July 18, 1974; Hubert C. Fernanders on July 18, 1974; Bartholomew Guida on July 19, 1974; Stanley Rogers on July 19, 1974 and James DeAngelis on July 19, 1974, filed by plaintiffs.	
8/30	Order, acquiesced in by all parties, ordering that this Court s temporary restraining order of Oct. 5, 1973, as extended and modified by later orders, is hereby terminated; that this Court s order of Dec. 5, 1973, is hereby terminated; that any State statutes municipal ordinances and regulations of the City Commissions in conflict with the terms of this Order are null and void to the extent necessary for compliance with the terms of this Order; and setting forth procedures re testing and hiring, entered. Zampano, J. M-8/30/74 Copies handed to all counsel on Aug. 30, 1974.	
9/20	Motion of Firefighter's Committee to Preserve Civil Service, Inc. (FCPCS) and the individuals named in Exhibit A, on behalf of themselves and of all persons in the New Haven Fire Department similarly situated, to Intervene as Defendants and Cross Claimants, filed.	
"	Affidavit of Albert Serletti, filed.	
"	Interveners (FPCPS, et al) Motion to Reopen Order, filed.	
"	Intervenors' Motion to Extend Time to File Appeal from Order of August 30, 1974, filed.	
"	Order to Show Cause for appearance at New Haven at 10:30 A.M. on September 30, 1974, entered. Zampano, J. Attested copies	

DATE 1974	PROCEEDINGS	Date Order or Judgment
	of Order, copies of Motion to Intervene, Affidavit, and Motions to Reopen and to Extend Time, handed to the Marshal for service.	
9/25	Return of Indifferent Person, Jacob G. Miller, filed. - Order to Show Cause, Motions and Affidavits.	
9/30	(1) Firefighter's Committee to Preserve Civil Service, Inc. Motion to Intervene as Defendants and Cross Claimants; (2) Intervenors' (FCPS) Motion to Reopen Order; and (3) Intervenors' (FCPS) Motion to Extend Time to File Appeal from Order - "Over to 10/1/74 at 2:30 P.M." Zampano, J. M-10/1/74	
10/1	Intervenor's (F.C.P.C.S., et al) Memorandum in Support of Application for Intervention, filed.	
"	Hearing on (1) Motion of F.C.P.C.S. to Intervene as Defendants and Cross Claimants; (2) Intervenors' (F.C.P.C.S., et al) Motion to Reopen Order; and (3) Intervenors' (F.C.P.C.S., et al) Motion to Extend Time to File Appeal from Order of August 30, 1974. Decision Reserved on all 3 motions, Intervenors' brief to be filed by 10/8; Defendants' brief due 10/15; Plaintiffs' Reply Brief due 10/22; Court orders December Memorandums be unsealed. Zampano, J. M-10/2/74	
10/4	Intervenors' Motion to Open Sealed Proceedings, filed.	
10/8	Intervenors' Offer of Proof, filed.	
10/10	Proposed Answer and Cross-Claim of Intervenors Firefighter's Committee for the Preservation of Civil Service, et al, filed.	
10/16	Intervenors' (F.C.P.C.S. et al) to Open Sealed Proceedings endorsed as follows: "Granted." Zampano, J. M-10/16/74 Copies mailed.	
10/22	Brief in Opposition to Application for Intervention, filed by plaintiffs.	
10/29	Brief in Opposition to Application for Intervention, filed by defendants.	
11/11	Applying Intervenors' (F.C.P.C.S. et al) Offer of Proof, filed.	
"	Applying Interveners' (F.C.P.C.S. et al) Reply Brief with Supplemental Offer of Proof, filed.	
1975		
2/3	Ruling on Motion to Intervene, entered. The Applicants' Motion to Intervene and all related motions are denied. Zampano, J. M-2/3/75 Copies mailed.	
2/6	Application for Stay of Judgment Pending Appeal, filed by Intervening Applicants.	
"	Notice of Appeal from the ruling on Motion to Intervene filed on Feb. 3, 1975, filed by Intervening Applicants. Copies mailed to all counsel and to Clerk, U.S.C.A. along with copy of Docket Entries.	
2/26	Appearance of Frank S. Meadow, Asst. Corporation Counsel entered for defendants.	
2/27	Application for Temporary Restraining Order, filed by Plaintiffs at hearing below.	
"	Hearing re Application for Stay of Judgment Pending Appeal. Plaintiff's Exhibits (A) Order to Show Cause and (B) Affidavit of John Reardon in support of Order to Show Cause, filed. Application for stay, granted for 10 or 14 days, or until such time that the Court of Appeals hears motion or Grants further extension of stay. Counsel to submit proposed order. Zampano, J. M-2/28/75	
3/3	Court Reporter's transcript of proceedings held October 1,	

(Cont'd.)

JS 110 Rev. Civil Docket Continuation — FIREBIRD SOCIETY, ET AL v. MEMBERS OF THE BOARD OF FIRE COMMISSIONER, ET AL

DATE 1975	PROCEEDINGS	Date Order Judgment No.
	1974. Russell, R.	
2/3	Court Reporter's Notes of Proceedings of Feb. 27, 1975, filed. Russell, R.	
2/4	Order Directed to Board of Fire Commissioners re the matter of appointments during period of stay, etc., entered. Zampano, J. 11-3/5/75 Copies mailed.	
2/10	Acknowledgment of receipt of record on appeal received from Clerk, U. S. Court of Appeals.	
3/6	Record on Appeal sent U. S. Court of Appeals. Copies sent counsel of record of Index and docket entries.	
3/14	Transcript of Proceedings held on February 27, 1975 before Honorable Robert C. Zampano, U.S.D.J., filed. Russell, R.	
3/21	True copy of Judgment of the U. S. Court of Appeals, affirming Order of the District Court, with costs to be taxed against the Intervenors-appellants; and further ordering that the stay previously granted be continued until 4:00 P.M., April 17, 1975, filed. Fusaro, C. 11-4/21/75	
4/3	Record on Appeal returned and receipt for same sent to Clerk, U.S.C.A.	
9/24	Motion for Hearing re Attorneys' Fees, filed by Plaintiffs.	
9/30	Motion for Hearing re Attorneys' Fees, filed by Intervenors.	
10/3	Motion to Produce Documents, filed by Plaintiff.	
10/8	Notice of Deposition of Francis Sweeney on 10/15/75 at 2:00 P.M., filed by plaintiffs.	
12/23	Affidavit of Heidi Hartmann, filed by plaintiff.	
12/23	Affidavit of Michael P. Koskoff, filed by Plaintiff.	
"	Affidavit of David N. Rosen, filed by plaintiff.	
"	Plaintiff's Memorandum of Law re: Computation of Attorneys' Fees, filed.	
1976		
~~1/16~~	~~Court Reporter's Notes of Proceedings held before Newman, J. on 1/13/76, filed.~~	
1/30	Time Schedule of Michael P. Koskoff, filed by plaintiff.	
2/2	Time Schedule of David N. Rosen, filed.	
2/5	Schedule of Expenses and Law Student Time, filed by Plaintiff.	
3/1	Appearance for the defendants, filed by Joseph D. Garrison.	
3/9	Memorandum In Opposition to Plaintiffs' Motion for Attorneys' Fees, filed.	
3/16	Time Schedule of W. Paul Flynn, filed.	
4/5	Hearing held on Application For Attorney's Fees: Decision Reserved; Briefs maybe filed within 10 days; three witnesses sworn and testified on behalf of plaintiff; one witness sworn and testified on behalf of the defendant; Oral Argument. Court Adjourned at 12:55 P.M. Zampano, J. 11-4/5/76.	
4/6	Court Reporter's Notes of proceedings held before Zampano, J. on 4/5/76 filed. Russell, R.	
11/3	Ruling on Plaintiffs' Motion for an Award of Counsel Fees and Costs. entered. The Court awards Attorney Rosen $9,370.00 for 58 hours of services at $50.00 per hour, 132 hours at $35.00 per hour, and 74 hours at $25.00 per hours. Attorney Koskoff is granted $4,860.00 computed at 54 hours of services at $50.00 per hour, 26 hours at $35.00 per hour, and 50 hours at $25.00 per hour. In addition, the sum of $1,493.60 is awarded for counsel's out-of-pocket expenses. So Ordered. Zampano, J. 11-11/4/76 Copies mailed.	
11/8	Notice of Appeal, filed by Plaintiffs. Copies mailed to	

DATE 1976	PROCEEDINGS	Date O. Judgmen
	counsel. Copy mailed to U.S.C.A. with copy of Docket Entries.	
11/15	Judgment entered for plaintiffs in accordance with the Court's order of August 31, 1974, and judgment is entered in favor of the plaintiffs and against the defendants for attorneys' fees and expenses in the amount of $15,723.60. Markowski, C. M-11/16/76 Copies mailed.	
12/6	Civil Appeal Scheduling Order #1, filed.	

COMPLAINT

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

THE FIREBIRD SOCIETY OF NEW HAVEN, INC., GEORGE SWEENEY, EARL GEYER, CHARLES GOODSON, TIM WATKINS, CLARENCE SMITH, CHARLES HOLNESS, MARTIN GOODSON, DONALD HOLNESS, JIMMY LA BOONE, ROBERT MILLER, THOMAS BULLOCK, CLYDE STEWART, FLOYD WILLIAMS, CHARLES WHITTABY, RODNEY TAYLOR, ELIZAH GAUSUS, CLIFTON McCLURE, individually and on behalf of all others similarly situated.

PLAINTIFFS

VS.

THE NEW HAVEN BOARD OF FIRE COMMISSIONERS, MICHAEL DEPALMA, HUGH KEENAN, IV, HUBERT C. FERNANDERS, JAMES DeANGELIS, EDWARD PULCHALSKI, individually and in their capacity as New Haven Board of Fire Commissioners, THE NEW HAVEN CIVIL SERVICE COMMISSION, STANLEY ROGERS, FRANK GRAZIOSO, VINCENT VILLANO, CLARENCE M. WHITNEY, individually and in their capacity as New Haven Civil Service Commissioners, THE NEW HAVEN DEPARTMENT OF FIRE SERVICES, FRANCIS J. SWEENEY, individually and in his capacity as Chief of the New Haven Department Fire Services and BARTHOLOMEW GUIDA, individually and in his official capacity as Mayor of the City of New Haven.

DEFENDANTS

CIVIL ACTION NO. 15876

FILED
OCT 5 4 36 PM '73
U.S. DISTRICT COURT
NEW HAVEN, CONN.

COMPLAINT

I. PRELIMINARY STATEMENT

1. Plaintiffs bring this action for declaratory and injunctive relief on their own behalf and on behalf of all others similarly situated to redress the injury done to them by defendants' policy and practice of discriminating on the basis of race, color and/or national origin against minority group members. Said minority group persons are currently being denied initial employment and promotion in the New Haven Fire Department. Plaintiffs seek immediate relief to enjoin assignment of any persons not members of plaintiffs' class who were appointed or promoted subsequent to assumption of jurisdiction of plaintiffs' complaint against defendants by the Equal Employment Opportunity Commission on July 24, 1973 and to enjoin any further appointments from current eligibility lists for hiring and promotion. Plaintiffs also seek permanent relief in order to secure their rights under Title VII of the Civil Rights Act of 1964, as amended, and the Constitution of the United States.

2. Plaintiffs' action for injunctive relief is brought pursuant to Title 42 U.S.C. Sections 1981 and 1983, barring deprivation under color of State statute, law, ordinance, regulation or usage of rights, privileges and immunities secured by the Equal Protection and Due Process clauses of the Fourteenth Amendment to the United States Constitution, and Title 42 U.S.C. Sections 2000e et seq. as amended, barring discrimination in employment on the basis of race, color or national origin. Plaintiffs also seek a

declaratory judgment pursuant to Title 28 U.S.C. Section 2201. The matter in controversy, exclusive of interest and costs, exceeds the sum of Ten Thousand ($10,000.00) Dollars. Jurisdiction is conferred on this Court by Title 28 U.S.C. Sections 1331 and 1343(3), and Title 42 U.S.C. Section 2000 e - 5(f).

CLASS ACTION

3. (a) The class consists of all those blacks and Hispanics* (hereinafter collectively referred to as "Minorities") who (i) have failed either an entry level or promotional examination given by the New Haven Civil Service Commission for a position in the New Haven Department of Fire Services (hereinafter referred to as the Department) for which eligibility lists are currently published or are to be published, or (ii) may become eligible to take such examinations to be given in the future, or (iii) have passed such an examination but, because of a low score, have not been appointed to the position applied for, or (iv) have been eliminated from contention for positions in the Department by reason of certain biased elements in the applicant screening procedures of the New Haven Civil Service Commission or the Department or (v) who would be eligible for appointment to positions within the Department but who are either unaware of the availability of such appointments or are unwilling to apply for such appointments because they believe the appointment procedures are discriminatory and unlawful in nature because the defendants have failed to establish a credible recruitment policy among minorities.

*As used herein, the term Hispanics means Spanish speaking or Spanish surnamed persons who were born or who are descended from persons who were born in Puerto Rico or other Caribbean, Central American or South American countries.

4. The requirements of Rule 23 F.R.C.P. are met in that the members of this class are so numerous as to make joinder impracticable; there are common questions of law and fact among the members of the class; the claims of the representative parties are typical of the claims of the class; the representative parties will fairly and adequately protect the interests of the other members of the class; and the defendants have acted and refused to act on grounds generally applicable to the members of the class, thereby making appropriate relief with respect to the class as a whole.

PARTIES

5. (a) The Firebird Society of New Haven, Inc. is a membership organization made up of black members of the Department. It includes all black members of the Department; the Department has no Hispanic members. It has worked over the years to recruit Minorities to the Department by locating qualified candidates for appointment from the New Haven Minority community and persuading them to take the appointment examination. It also works to advance the interests of Minorities in the Department by fighting against discrimination in promotions within the Department.

(b) Plaintiff GEORGE SWEENEY is black, the President of the Firebirds and a Firefighter in the Department. He and Plaintiff EARL GEYER, also black, a member of the Firebirds and a Firefighter in the Department, have taken and passed the Lieutenant's examination a combined total of three times but have not been promoted because their total eligibility score including efficiency rating placed them too low on the list for the number

of appointments made.

(c) Plaintiffs CHARLES GOODSON, TIM WATKINS, CLARENCE SMITH, CHARLES HOLNESS, MARTIN GOODSON, DONALD HOLNESS, JIMMY LA BOONE, ROBERT MILLER, THOMAS BULLOCK, CLYDE STEWART and FLOYD WILLIAMS are all black, members of the Firebirds and are black Firefighters in the Department.

(d) Plaintiff CHARLES WHITTABY is black and failed the Firefighters (hiring) examination, although he is and was fully qualified to be a Firefighter.

(e) Plaintiff RODNEY TAYLOR is black and applied to enter the Department but was rejected purportedly because he did not meet the minimum height requirement, although he is and was fully qualified to be a Firefighter.

(f) Plaintiff ELIZAH GAUSUS is black and applied to the Department but was rejected purportedly because he was too old, although he was then and is now fully qualified to be a Firefighter.

(g) Plaintiff CLIFTON McCLURE is prepared, ready, willing and able to apply for a job in the Department.

(h) Defendant MICHAEL DePALMA is the President and defendants HUGH KEENAN, IV, HUBERT C. FERNANDERS, JAMES DeANGELIS, and EDWARD PULCHALSKI are the members of the New Haven Board of Fire Commissioners, which is responsible for determining how many persons to promote and hire in the Department and for selecting from among the eligible applicants the persons to be promoted and hired.

(i) Defendant STANLEY ROGERS is the President and

BEST COPY AVAILABLE

Defendants FRANK GRAZIOSO, VINCENT VILLANO, CLARENCE M. WHITNEY are members of the New Haven Civil Service Commission, which is responsible for designing and administering hiring and promotion examinations, establishing eligibility lists and certifying persons who are eligible for appointment to positions and promotions in the Department.

(j) Defendant FRANCIS J. SWEENEY is the Chief of the New Haven Department of Fire Services and as such participates in all decisions made with respect to hiring and promotions and, with the Defendant GUIDA and with other officers in the Fire Department determines efficiency ratings for members of the Department.

(k) Defendant BARTHOLOMEW GUIDA is the Mayor of the City of New Haven and as such selects the members of the Board of Fire Commissioners and Civil Service Commission. On information and belief he also participates in determining efficiency ratings for members of the Department.

Each defendant is sued individually and in his official capacity.

FIRST COUNT: FACTUAL BACKGROUND

6. New Haven is a city with a total population according to the 1970 census of 137,707 people. Of this total, 36,175 are blacks and it is estimated that an additional 4,916 are Hispanic. In percentage figures, the total minority population is approximately thirty percent.

7. Upon information and belief, the Department presently employs 502 men. Of this total, approximately 61 are lieutenants, approximately 34 are captains, 8 are Battalion Chiefs, 4 are deputy chiefs and 9 are other supervisory personnel.

8. Only 18 of the 502 men in the Department are black. In percentage terms, minority group members constitute approximately 3.4 percent of the Department. App. 14

9. Of the 107 officers in the Department, only one is black, and he is a lieutenant, the lowest rank above private.

10. Prior to taking any promotional examination in the New Haven Fire Department, an applicant must complete a time-in-grade requirement of five years for lieutenant (the equivalent of sergeant in the Police Department) and two years for captain (the equivalent of a Police Lieutenant) and higher ranks. Applicants must then take a written examination. A passing grade of 70% on the written exam is a requisite of eligibility for promotion. The written exam counts 55% of the total promotional score and an efficiency rating counts 45%. The efficiency rating is given by the Chief and is disclosed to each applicant (but not published generally) only after scores on the written exam are made known. A list is then compiled from which appointments are made according to the "rule of three," which requires each appointment to be made from among the top three on the list. The list is in effect for two years. However, appointments may be made without regard for the number of openings available. Appointees to positions which are not vacant are not assigned to their new position until there is a vacancy, which may not be until many years after their appointment. The number of persons promoted from each list is not determined in advance of preparation of the list and is governed by no ascertainable criteria.

11. Applicants for initial appointment to the Department must pass through the following stages in the selection process:

(a) Completion of the standard Civil Service Application form.

(b) Preliminary screening to determine if the applicant meets certain mandatory departmental standards. These include:

Height:	5'7" minimum
Weight:	145 lbs. minimum
Education:	High School diploma
Residency:	New Haven or a contiguous town.
Age:	More than 21 and less than 29 years.
Character:	Arrest records are checked, and exclusions are made on the basis of them, but no fixed standard is used.

(c) Physical examination, for endurance and strength, which plaintiffs believe is graded on a pass/fail basis.

(d) Written examination: The applicant must achieve a grade of 70% on the written test to become eligible for appointment. The test is administered by the Civil Service Commission. It is a multiple-choice test which stresses reading comprehension, arithmetic, computation and vocabulary and is of the type which has been known to exert a discriminatory racial impact in the past. The form used in the most recent hiring examination was the Otis Employment test 2A, a copy of which is attached to this complaint as Exhibit E, a test which was first published in 1922.

(e) Selection: Applicants are then selected by the Board of Fire Commissioners at the recommendation of the Chief. If the appointment is from the regular Civil Service List, the selection process follows the "rule of three." However, appointments are usually made from a list called the "substitute list," which is exempted from Civil Service requirements by City Charter. The most recent group of appointments was made from this list. Appointments from this list do not have to follow the rule of three. Anyone designated "eligible" by the Civil Service Commission on

the basis of passing the written and physical exams and meeting minimum eligibility criteria of height, weight, age, residence, etc., may be selected, and the practice of the Board of Fire Commissioners is to pick and choose candidates from all parts of the list.

PROMOTION PROCEDURES

12. Defendants and their agents and employees are engaged in a policy and practice of discriminating against plaintiff members of Firebirds, and members of their class because of their race, color and/or national origin, in that defendants' standards and procedures for the promotion of firemen within the New Haven Department of Fire Services unlawfully favor white firemen and tend to exclude, limit and otherwise discourage plaintiffs' promotions. More specifically, the defendants deny plaintiffs and members of their class equal employment opportunities by a series of practices which include, but are not limited to, the following:

(a) The use in conjunction with promotions of written examinations which exclude a disproportionately high percentage of minority applicants for promotion and upon information and belief --

(i) have never been subjected to an impartial professional validity study that would correlate the results on the tests with future performance;

(ii) are prepared, evaluated and graded by examination personnel who have had insufficient training to prepare written tests;

(iii) are not predictive of performance in the position being tested for;

(iv) contain questions which call for subjective judgment and the answers to which would vary depending on the racial, social, cultural, and national background of the examinee;

(v) depend largely upon non-job-related verbal and mathematical skills;

(vi) are obsolete;

(vii) are not secure, and are available to the public at large.

(b) The Efficiency Rating: Defendants use an "efficiency rating" which is determined entirely subjectively and with only the vaguest standards for measuring "efficiency," does not aid in predicting performance in supervisory positions in the Department, has never been validated, and is determined by persons who have not had direct contact with the person being graded and cannot evaluate his performance. The efficiency rating is easily used as a device to discriminate against plaintiffs because it is only disclosed after the written examination scores are available;

(c) Time-in-grade requirements. The time-in-grade requirement for promotion tends to perpetuate past discrimination and keep minorities out of the officer ranks of the Department. This requirement has never been subjected to impartial professional validity studies or other adequate validation tests.

(d) Selection from the Eligible List: The practice of the Board of Fire Commissioners to determine the number of appointments to be made only after the eligibility list is

available permits them to manipulate the number of appointments to discriminate against plaintiffs and their class. This is accomplished in two ways:

1) The Board can appoint just few enough officers to avoid promoting a minority person. In the most recent promotions, 17 Captains were appointed, and the list stopped two men in front of the only black on the list. The number 17 was wholly unrelated to the needs of the Department.

2) The discriminatory effects of time-in-grade requirements are accentuated when more officers are appointed than vacancies exist. The most recent appointments of Captains, for example, precludes even the possibility of assignment of any members of plaintiffs' class to that job until approximately 1983.

The result of this discrimination is that only one minority person has ever been an officer in the Department, and he is at the lowest officer's rank. Only four blacks have ever been eligible to take a promotional exam at the time it was given.

APPOINTMENT PROCEDURES

13. Defendants are engaged in policies and practices which discriminate against plaintiffs who have been or will be applicants for initial appointments to the Department and members of their class on account of their race. More specifically, the defendants deny plaintiffs and members of their class equal employment opportunities by a series of practicies which include, but are not limited to, the following:

(a) The use of written examinations as a requirement for appointment as a Firefighter in the Department which exclude

a disproportionately high percentage of minority applicants and, upon information and belief --

(i) have never been subjected to an impartial professional validity study that would correlate the results of the tests with future performance as a fireman;

(ii) are prepared, evaluated and graded by examination personnel who have had insufficient training to prepare, evaluate and grade written tests;

(iii) are not predicitive of performance in the position being tested for;

(iv) require a knowledge of vocabulary, reading comprehension, politics, mathematics, and other matters which are not relevant to the work performed by firemen;

(v) depend largely upon non-job related verbal and mathematical skills;

(vi) are obsolete;

(vii) are not secure, and are available to the public at large.

(b) The practice of hiring from the "substitute list" in order to evade the Civil Service requirement of "rule of three." Use of the "substitute list" enables the Board of Fire Commissioners carefully to regulate the number of minority persons joining the Fire Department. The Department has until recently followed a practice of having one black in each "class," or group of entrants. This pattern of systematic tokenism is demonstrated by

the list of dates on which blacks have entered the Department.

That list is:

1953	J. Curry
1957	G. Sweeney
1961	D. Wilson
1962	E. Geyer
1965	M. Robinson
1966	C. Goodson
1967	T. Watkins
1968	C. Smith
1969	C. Holness
1970	M. Goodson
1970	R. Carter
1970	D. Holness
1970	J. LaBoone
1970	R. Miller
1971	T. Bullock
1971	C. Stewart
1972	F. Williams
1972	R. Wilson

(In 1970 a reduction in hours in the work week led the Department to hire 100 men, accounting for the relatively large number of blacks hired.)

(c) Use of various minimum requirements, none of which have ever been subjected to any adequate validation study. These include:

(i) The height and weight requirements, which operate to exclude qualified Hispanics (and blacks as well);

(ii) the education requirement, which excludes many qualified Minority persons who on the average have less formal education than whites;

(iii) the age requirement, which operated to exclude minorities who were victimized by discrimination in the past;

(iv) the use of arrest records, which tends to exclude qualified minorities, who statistically are arrested more frequently than whites. These requirements have been waived for whites but not minorities and have been invoked against minorities

when applicable. Plaintiff RODNEY TAYLOR meets the minimum height requirement but was falsely told that he did not and excluded from competition for appointment to the Department on account of his race. Plaintiff ELJZAH GAUSUS met the minimum age requirement at the time he took the hiring examination but was refused a job purportedly because he turned 29 before he was appointed.

(d) Following recruitment policies and practices which fail to assure, or even encourage, equal recruitment of minorities for employment in the Department.

14. Prior to instituting this action, plaintiffs have attempted conciliation to induce defendants to comply with the law: On May 18, 1972, plaintiffs sent letters to defendant DePALMA, defendant GUIDA, and defendant SWEENEY, expressing concern at the low number of minority persons in the Department. Nothing was done by the Department to increase the number of minority persons in the Department. Therefore, on June 15, 1973, plaintiffs filed a complaint with the Equal Employment Opportunity Commission. A copy of said complaint is attached to this complaint as Exhibit A.

15. The Department's response to the filing of that complaint was to "stack" the office of Captain by appointing seventeen Captains from the eligible list on the day before that list would expire by law. The Department further selected sixteen new Firefighter trainees only one of whom is black, from the "substitute list" then in existence, thus attempting to close off access to the Department.

16. Plaintiffs thereupon ascertained from the Department of Justice that the EEOC would be unable to investigate their complaint or effect reconciliation before the statutory 180 day period expired January 24, 1973 (see letter from Department of Justice attached to this complaint as Exhibit C).

17. The defendants thus adhere to the discriminatory practices described in paragraphs 14 and 15 above despite their knowledge that the Department of Fire Services employs a dramatically disproportionate number of minority group members as privates and officers in relation to their presence in the City's population.

18. The policies and practices described in Paragraphs 14 and 15 above constitute violations of plaintiffs' rights, privileges and immunities secured by the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution; and 42 U.S.C. Sections 1981 and 1983.

19. The policies and practices described in Paragraphs 12 and 13 above also constitute violations of plaintiffs' rights, privileges and immunities under:

(a) Article I, Sections 1 and 20 of the 1965 Connecticut Constitution providing that all men are equal in rights, and no person shall be denied equal protection of the law nor be subjected to discrimination in the enjoyment of his civil rights because of his race.

(b) Sections 7-409 and 7-413 of the Connecticut General Statutes which provide that local Civil Service Commissions are to select public employees upon the sole basis of proven ability to perform their employment more efficiently than others and, among other criteria, Civil Service tests shall relate to those matters which will fairly disclose the relative capacity of the persons tested to discharge the duties of the position to which they seek to be appointed.

SECOND COUNT:

20. Paragraphs 1 through 17 are hereby incorporated by reference the same as if fully set forth herein.

21. After filing a complaint with the EEOC, plaintiffs were informed by that agency that it had informed the Department of Justice that it would not complete its investigation or reconciliation of the parties within the statutory 180 day period. Plaintiffs were then informed by the Department of Justice that

it had issued a "right to sue" letter under Title 42 United States Code Section 2000e-5(e). See Exhibit C attached hereto.

22. Defendants' discriminatory practices violate the plaintiffs' right and the right of their class to equal employment opportunity guaranteed by Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, Title 42 U.S.C. Section 2000e, et seq., as amended.

23. Unless this Court acts immediately, defendants' conduct will irreparably injure plaintiffs and their class by, inter alia:

(a) causing assignment of officers chosen in violation of plaintiffs' right to equal employment opportunity and foreclosing plaintiffs' opportunities to become officers in the foreseeable future.

(b) causing assignment of fire fighters chosen in violation of plaintiffs' constitutional right to equal employment opportunity and foreclosing the opportunities of plaintiffs and their class to work for the Department for the next year, as well as creating a racially more segregated Department for many years to come.

(c) selecting personnel on the basis of tests and other selection devices which discriminate against plaintiffs and their class for which plaintiffs have no adequate remedy at law.

A. RELIEF

24. Plaintiffs and the classes they represent have suffered and will continue to suffer, irreparable harm, injury and loss, for which they have no adequate remedy at law, unless defendants are restrained from continuing the practices, policies and procedures referred to in this complaint, and unless defendants

are required to take affirmative actions to dissipate the effects of their discriminatory and unlawful behavior. The right of the plaintiffs and the classes they represent are among the most fundamental in nature--the right to be fairly considered for a government job for which they are fully qualified rather than being discriminated against because of their race and cultural backgrounds. The interest of the public in bringing an end to discriminatory hiring practices in local government bodies and in having a Fire Department that draws its personnel from all segments of the community, will be significantly advanced by the Court's exercise of its equity powers.

B. EMERGENCY RELIEF

25. In order to prevent continuing discrimination against and further irreparable injury to plaintiffs and members of their class within the next ten days and thereafter, plaintiffs respectfully request this Court to enter a Temporary Restraining Order and a Preliminary Injunction restraining defendants and their successors in office, agents, employees and their successors in office from:

(a) assigning anyone not in plaintiffs' class to positions to which they were appointed on or after the date defendants or any of them were formally notified of the pendency of plaintiffs' complaint with the EEOC.

(b) administering any written exams in conjunction with promotions within the Department.

(c) hiring or promoting anyone not in plaintiffs' class from the eligibility lists for positions within the Department.

(d) taking any action which would have the effect of denying, abridging, withholding, conditioning, limiting, or otherwise interfering with the rights of plaintiffs and members of their class to equal employment opportunities pending the outcome of this litigation.

C. PERMANENT RELIEF

26. For permanent relief, plaintiffs respectfully pray that this Court:

1) Enter its permanent injunction

(a) Granting the relief prayed for in Paragraph 25 of Section B above.

(b) Restraining and enjoining the Department and Civil Service Commissioners and their successors from administering or otherwise making use of any test as a criterion for appointment to or promotion within the Department which has not been prepared and validated in accordance with sound standards of professional psychological testing as accurately measuring the merit and fitness of candidates to perform the tasks of the position for which the test is being administered.

(c) Requiring the Civil Service Commission to promulgate Spanish language versions of all future entrance and promotional exams together with appropriate qualifying, non-competitive exams to test for minimum English proficiency.

(d) Awarding plaintiffs and their class back pay.

(e) Eliminating all time-in-grade requirements for the plaintiffs and their class in the Department.

(f) Eliminating the currently existing height and weight requirements for employment by the Department and the exclusion of those with arrest records.

2) Retain jurisdiction of this action and order defendants to submit for the Court's approval:

(a) A revised system for promotions under which qualified applicants are to be selected only from the class of plaintiffs, as openings arise, until they are represented as officers in the Department in proportion to their number among residents of the City of New Haven; or

(b) A revised system for promotions under which qualified applicants are to be promoted alternately, one white and one minority from the class of plaintiffs, as openings arise, until they are represented as officers in the New Haven Fire Department in proportion to their number among residents of the City of New Haven; and

(c) A revised system of hiring under which qualified applicants will only be hired from the class of plaintiffs, as openings arise, until they are represented in the Department in proportion to their number among residents of New Haven; or

(d) A complete plan for promotions, recruitment and hiring which includes as part of any proportional hiring plan that such plan shall apply to all hiring done after filing of plaintiffs' complaint with the EEOC.

(e) Granting of seniority to plaintiffs and members of their class back to the date that they first applied for a position in the New Haven Fire Department regardless of whether or not they passed the hiring selection criteria which have been determined to have been discriminatory.

3) Award plaintiffs and their class actual damages of ONE MILLION ($1,000,000.00) DOLLARS.

4) Award plaintiffs and their class punitive damages of ONE MILLION ($1,000,000.00) DOLLARS.

5) Grant such additional relief as may appear to the Court to be equitable and just.

6) Allow plaintiffs their costs herein, including reasonable attorneys' fees.

Dated: October 3, 1973.

THE PLAINTIFFS,

By _____
MICHAEL P. KOSKOFF
1241 Main Street
Bridgeport, Connecticut
203 336-4406

DAVID N. ROSEN
EDWARD J. DOLAN
265 Church Street
New Haven, Connecticut
203 787-1920

Their Attorneys

EXHIBIT A

CHARGE OF DISCRIMINATION

The undersigned affiants charge the City of New Haven, Connecticut, Fire Department, the City of New Haven Civil Service Commission, municipal agencies, and the City of New Haven with discrimination against them on account of race and color.

This discrimination is against all non-white persons. It is a course of conduct which has continued until the present. A copy of this complaint is being filed with the State of Connecticut Commission on Human Rights and Opportunities.

NATURE OF DISCRIMINATION

The hiring practices of the New Haven Fire Department have discriminated and continue to discriminate against non-whites. Although the population of the City of New Haven is approximately 25% black and Puerto Rican there is only 3% minority representation in the City's fire department. The City hired its first black fireman in 1953, and as recently as 1957 there were only two black firemen, although the department at these times had several hundred members and now has over 500.

The promotion practices of the New Haven Fire Department also discriminate against non-whites. The system of promotion perpetuates past discrimination. Consequently only one non-white -- with twenty-one years' service is an officer in the department.

The following discriminatory devices are presently employed by the New Haven Department:

1. Entrance and promotion examinations are culturally biased against non-whites resulting in a substantially disproportionate failure rate among non-white applicants, are not validated, and do not measure aptitude or ability as a firefighter.

2. Physical performance tests are also used as part of the entrance examination but the proportions assigned to different parts of the examination are not publicly announced or disclosed to the applicants and may vary.

3. Certain mandatory requirements such as age and height are and have been waived for white applicants but not for non-white ones.

4. Non-white applicants, including the complainant, Rodney Taylor, have been rejected for false and spurious reasons, but white applicants are not so rejected. The complainant Taylor was told he was too short for the job,

although he is taller than the minimum height required.

5. The accession system is not insulated against discrimination. The Board of Fire Commissioners is not bound to take applicants in the order of their scores on the entrance tests but can pick and choose applicants who have scored high or low.

6. Past discrimination in hiring is perpetuated as discrimination in promotions by a requirement of serving five years in grade before being eligible for promotion.

7. Vacancies among higher ranks are often filled on the basis of promotional examinations for which eligibility lists were closed years before, thus effectively precluding advancement by non-whites because of past discrimination in hiring.

8. The number of people to be promoted or the passing score on promotional examinations are not publicly announced or determined in advance; the number of people promoted after an examination can be and has been manipulated in favor of whites, but not blacks.

9. No active recruiting program has been initiated by the Fire Department to remedy past discrimination.

NEW HAVEN FIREBIRDS

BY [signature]
GEORGE SWEENEY, PRESIDENT

The undersigned complainants are all members of the New Haven Firebirds.

George Sweeney

Donald Wilson

Earl Geyer

Charles Goodson

Tim Watkins

Clarence Smith

Charles Holness

Martin Goodson

Donald Holness

Jimmy La Boone

Robert Miller

Thomas Bullock

Clyde Stewart

Floyd Williams

The undersigned is an unseccessful black applicant to the New Haven Fire Department.

Rodney M. Taylor

Subscribed and sworn to be fore me this 15th day of May , 1973.

David N. Rosen
Commissioner of Superior Court

EXHIBIT B

AFFIDAVIT OF RICHARD BARRETT

I, Richard S. Barrett, being first duly sworn, depose and say:

1. I make this affidavit in support of plaintiffs' Motion for Temporary Restraining Order in the case of New Haven Firebirds v. Board of Fire Commissioners. I am presently Professor of Management Science at Stevens Institute of Technology in New Jersey, and Director of its Laboratory of Psychological Studies. In the latter capacity I am a consultant in connection with industrial psychological problems, particularly matters dealing with fair employment issues. The laboratory is consulting with the Pennsylvania State Police Department to make their selection and promotion procedures valid and fair for minority candidates. In the past I have consulted on employment testing with, among others, the National League for Nursing, the United States Air Force, Standard Oil (New Jersey), Lever Brothers, and Equitable Life Insurance Society. I received a B.S. in Administrative Engineering from Cornell University in 1948, an M.A. in Education from Syracuse in 1952, and a Ph.D. in Industrial Psychology from Western Reserve University in 1956.

2. I was principal investigator on a study, sponsored by the Ford Foundation which resulted in publication of the

book, Testing and Fair Employment, by Kirkpatrick, Jr., Ewen, R., Barrett, R., and Katzell, R. I have testified as an expert witness in major fair employment hiring cases including Griggs v. Duke Power Co., and Chance v. Board of Examiners, and eight cases regarding the selection or promotion, or both, of police officers, including the recent cases of Pennsylvania v. O'Neill and Bridgeport Guardians, Inc., v. Bridgeport Civil Service Commission, and one case involving firefighters, Harper v. Mayor and City Council of Baltimore.

3. I have examined the Otis Employment Test 2A which, I understand, is used to screen out all applicants who score less than 70% and is further used for some of the applicants to establish a rank order list from which appointments are made. I have not seen a manual, nor any data reflecting performance on the test or its validity.

4. I am of the opinion that the test is inappropriate for use in the selection of firefighters. It is an old test, Copyright 1922. Although it is still in print, it is not mentioned in the Seventh Mental Measurements Yearbook (1972), and it is not reviewed in the Sixth Mental Measurements Yearbook (1965). It is a highly academic test of vocabulary,

logic, geometry, arithmetic and number series. Such a test is most typically used in an academic setting where it may be used to predict course grades. The series of tests of which it is a part has been updated with the Otis-Lennon Test, which is designed strictly for an academic setting.

5. It is my opinion that this test is of a kind which is most discriminatory against blacks and those of Spanish language background because of its emphasis on the academically oriented items. For many reasons, including inferior education, attitudes toward testing, and language differences, blacks and Spanish language background persons have almost universally done poorly in such tests.

6. Based on my limited knowledge of firefighting, I do not believe that the test can be shown to have content validity, that is, that it is a sample of job performance or tests essential knowledge or skills. It tests verbal, numerical and other academic skills; the firegighter works on an intensely physical job.

7. Although criterion-related validity studies are technically feasible for the test in a fire department employing 500 men, it is my opinion that the test is most

unlikely to be amenable to a demonstration of criterion related validity, that is, it will not be possilbe to show that high scorers on the test perform better on the job. To be sure, a firefighter is required to learn many things which are not already to him as an applicant, and the Otis Employment test is, in part a test of learning ability. However, experience has shown that a relationship between tests such as the Otis and ability to perform on a newly learned job is not consistent. In any event, it can be established only by a criterion related validity study.

8. I have been informed that the promotion examination consists of two parts, an essay examination and a rating. Both, as I understand their application are almost certain to be invalid, and likely to discriminate.

9. Essay examinations tap the higher order skill of writing prose, a skill which is most likely to be deficient in the black and Spanish background candidates for the reasons cited regarding the Otis Test. Furthermore, essay tests are extremely difficult to grade accurately. For example, the Educational Testing Service, the largest test construction organization, has never been able to de-

velop a satisfactory scoring procedure for essay examinations. They are also open to bias in scoring if the scorer recognizes terminology or forms of expression which are characteristic of Blacks or Spanish speaking candidates.

The possibility of showing the tests to be either content or criterion-related valid is remote for the reasons cited regarding the Otis Test.

10. It is my understanding that the Fire Chief rates 500 firefighters with the advice and comment of the Mayor. It is manifestly impossible for one person to be sufficiently familiar with the performance of 500 individuals to be able to rate them; it is, in fact, rare for anyone to be able to rate 20. For ratings to be valid and fair, they must be performed by a person who knows the subject's performance intimately, who has been trained in the use of a professionally developed rating procedure, and who is supervised and motivated to give accurate ratings. It is especially important that the rater be able to document his ratings so as to make as sure as is possible, that he has not allowed conscious or unconscious ethnic bias to influence his report.

11. The rating procedure as it is described herein is wide open for the unrestrained exercise of bias and is

almost certainly incapable of justification on the grounds of either content or criterion related validity.

Richard S. Barrett

Richard S. Barrett

Subscribed and sworn before me at Hastings-on-Hudson, New York, this 5th day of October 1973.

Daniel Rosen

Commissioner of Superior Court

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the Division Indicated and Refer to Initials and Number

JSP:DH:lt
DJ 170-017-14

NOTICE OF RIGHT TO SUE WITHIN 90 DAYS

OCT 21 1973

Mr. George Sweeney, President
Firebirds Association
c/o Rosen & Dolan
265 Church Street
New Haven, Connecticut 06510

Re: EEOC Charge Against City of New Haven Fire Department
No. TBO 3 - 1071

Dear Mr. Sweeney:

Because your organization has filed a charge against the respondent named above with the Equal Employment Opportunity Commission, and the Commission has determined that it will not be able to investigate and conciliate that charge within 180 days of the date the Commission assumed jurisdiction over the charge, and this Department has determined that it will not file any lawsuit based upon that charge within that time, and because you have specifically requested this Notice, you are hereby notified that any of the charging parties has the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq., against the above named respondent.

If you choose to commence a civil action, such suit must be filed in the appropriate United States District Court within 90 days of your receipt of this Notice.

If you are unable to retain an attorney, the Court is authorized in its discretion to appoint an attorney to represent you and to authorize commencement of the suit without payment of fees, costs, or security. In order to apply for an appointed attorney, you may take this Notice, along with any correspondence you have received from the Justice Department or the Equal Employment Opportunity Commission, to the Clerk of the United States District Court in New Haven, Connecticut.

Your attorney may inspect the investigative file pertaining to your case at a time and place convenient to the parties. That file is located in the EEOC District Office, at 100 Charles River Plaza, 5th Floor, Boston, Massachusetts 02114.

We request that you send this Department a copy of any complaint initiating suit.

This notice should not be taken to mean that an agency of the United States has made a judgment as to whether or not your charge is meritorious.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

By: Eileen M. Stein

EILEEN M. STEIN
Attorney
Employment Section

cc: Mr. David Rosen, Esquire
Rosen & Dolan
265 Church Street
New Haven, Connecticut 06510

Mr. James Nunes, Director
EEOC District Office
100 Charles River Plaza
5th Floor
Boston, Massachusetts 02114

EXHIBIT D

AFFIDAVIT

I, GEORGE SWEENEY, being sworn, depose and say:

1. I am 41 years old.

2. I was appointed to the New Haven Department of Fire Services on April 8, 1957, and I have been a member of the Department continuously for the past 17 and 1/2 years.

3. I have taken the lieutenant's exam twice, the last time in 1970. I passed the exam both times, but was not appointed a lieutenant.

4. I am the president of the Firebird Society of New Haven, Inc. a non-profit organization composed of black members of the New Haven Fire Department. The aims and goals of the Firebird Society, as set forth in our constitution are as follows:

a. To promote a better understanding, to promote friendship and cooperation among all members of the Fire Department of the City of New Haven.

b. To promote a better understanding between the black community and the Fire Department.

c. We shall encourage the black members of the Department of Fire Service to thoroughly familiarize themselves with the rules and regulations of the Fire Service, as well as the procedure, so that these men may better serve the city and the community in which they work.

d. The organization shall be dedicated to helping fellow firefighters, black in particular, toward promotional aspirations by holding study sessions with the existing firefighters as well as those aspiring to be firefighters.

e. To raise funds for needy persons who have fallen victims to the ravish of fire. Also for Ghetto area self-improvement programs.

f. We shall try to stem the flow of ill feeling between the ghetto area and fire service of the City of New Haven. We shall lend ourselves to alleviate the feeling of a double standard in fire-fighting and overhauling in ghetto communities. To these aims and goals we pledge this organization and ourselves.

5. I make this affidavit both as an individual, and as president of the Firebird Society. I have discussed the facts presented in this affidavit with the members of the Firebird Society, and assert that these facts are true on behalf of the organization, as well as myself individually.

6. On May 18, 1972, the Firebird Society sent letters to Mayor Bart Guida, Chief Francis Sweeney, and Michael DePalma, President of the New Haven Board of Fire Commissioners expressing concern at the low percentage of minorities in the New Haven Department of Fire Services. We received no response to any of these letters.

7. On June 15, 1973, the Firebird Society filed a complaint with the Federal Equal Employment Opportunity Commission and the State of Connecticut Commission on Human Rights and Opportunities. We have had no response from this complaint. We expected that the City of New Haven would act in good faith by not making more appointments during the time our complaint was waiting for action by the EEOC.

8. On August 31, 1973, 17 Captains were appointed by the Department from a list compiled on August 25, 1971. No blacks or hispanics were among those appointed. There was one black on the list eligible for appointment, but he was three positions below the last man appointed. These appointments were made one day before the list was to expire.

9. These appointments were made to create a new battalion in the Department, but only four of these seventeen Captains will be needed in the new battalion.

10. On September 6, 1973, the Department appointed 16 firefighters from a substitute list compiled on August 17, 1972. Only one of those appointed was black. There are no remaining minorities on this August 17, 1972 substitute list. Only 5 blacks were initially on the list of approximately 100.

11. These threatened new assignments will irreparably injure plaintiffs and their class in the following ways:

(a) Based on my experience and my knowledge of the Department of Fire Services, there will not be vacancies for all 17 Captains just appointed until approximately 1983. Thus no blacks will be assigned as Captain until at least that date.

(b) Based on my experience and my knowledge of the Department of Fire Services, there are approximately 5-12 openings in the rank of Private per year. Since the population of the City of New Haven is declining, that number will probably not increase substantially in the foreseeable future. Appointment of 11 white and only 1 black firefighter therefore forecloses any likelihood of significantly increasing the number of blacks in the Department of Fire Services for the next year.

(c) In my experience as a firefighter in the City of New Haven I have come to realize that the minority community of New Haven has been inadequately serviced by the Fire Department. This is due to the lack of minority personnel in supervisory ranks and the failure and/or unwillingness of current supervising personnel to understand and/or answer the needs of

the minority community. I believe that this situation creates an immediate danger to the lives and property of the minority citizens of New Haven.

12. These recent actions of the Department indicate that the Department is trying to "stack" itself with white personnel, making it impossible for black and Hispanic applicants to get into the department, or to advance within the ranks.

13. There is no effective program of recruitment of minorities. In particular, the department did not recruit in the black community before the April, 1972 entrance exam.

14. The Civil Service Commission will soon be holding a new exam for the rank of lieutenant although the date of this exam has not yet been announced. I plan to take this exam.

15. I believe that the current promotion system within the New Haven Department of Fire Services is racially biased against minorities. The promotion lists are compiled from two scores, a written test which counts for 55% and an "efficiency rating" which counts for 45%. This "efficiency rating" is given after the written exam, and is issued by the Chief of the Department. The use of the efficiency rating allows subjective factors to enter into the promotion process, and allows discrimination against black persons. In addition, the completely unregulated system of choosing the number of appointments to be made, whereby the number of men promoted is determined only after test results are released and is frequently - as in the case of the recent Captaincy appointments - of more men than there are vacancies to be filled, can easily be and is manipulated to discriminate against blacks.

16. I believe that the present written examinations and the entire promotion system within the New Haven Department of Fire Services is racially biased against minorities. I feel that many members of the black community are not informed about the Department, and feel that they can't make progress in promotions within the Fire Department, because of the notable lack of success of minority members of the Department, and the Services' knowledge that the Department favors those of other ethnic backgrounds.

17. On information and belief, blacks in the Department have taken promotional examinations a total of six times. We have passed all six times. However, only once was the list not stopped above us, most commonly, just above us. In the recent selection of Captains the list was stopped two names above the only eligible black.

18. The new Captains who will soon be assigned will make it possible for the Department to open a new battalion.

This new battalion, however, will not put any additional men in the field fighting fires. It is as of now purely an organizational rearrangement creating more supervisory personnel and no more men or equipment to fight fires. The Department's efficiency will not be reduced if creation of this new battalion is delayed.

19. Some of the new Captains may be assigned any day. The new fire fighters will complete their training and be assigned to firehouses on abour November 5, 1973. Immediate action by the Court is necessary to maintain the status quo with respect to these positions.

GEORGE SWEENEY

OTIS EMPLOYMENT TESTS 2A

TEST 2—FORM A

Read this page. Do what it tells you to do.

Do not open this paper, or turn it over, until you are told to do so. Fill these blanks, giving your name, age, etc. Write plainly.

Name..... Age last birthday.....years
First name, initial, and last name

Address..... Date.....19.....

This is a test to see how well you can think. It contains questions of different kinds. Here is a sample question already answered correctly. Notice how the question is answered:

Which one of the five words below tells what an apple is?
1 flower, 2 tree, 3 vegetable, 4 fruit, 5 animal.....(*4*)

The right answer, of course, is "fruit"; so the word "fruit" is underlined. And the word "fruit" is No. 4; so a figure 4 is placed in the parentheses at the end of the dotted line. This is the way you are to answer the questions.

Try this sample question yourself. Do not write the answer; just draw a line under it and then put its number in the parentheses:

Which one of the five words below means the opposite of north?
1 pole, 2 equator, 3 south, 4 east, 5 west.....( )

The answer, of course, is "south"; so you should have drawn a line under the word "south" and put a figure 3 in the parentheses. Try this one:

A foot is to a man and a paw is to a cat the same as a hoof is to a — what?
1 dog, 2 horse, 3 shoe, 4 blacksmith, 5 saddle.....( )

The answer, of course, is "horse"; so you should have drawn a line under the word "horse" and put a figure 2 in the parentheses. Try this one:

At four cents each, how many cents will 6 pencils cost?.....( )

The answer, of course, is 24, and there is nothing to underline; so just put the 24 in the parentheses.

If the answer to any question is a number or a letter, put the number or letter in the parentheses without underlining anything. Make all letters like printed capitals.

The test contains 75 questions. The examiner will tell you how much time you can have for the examination. You are not expected to be able to answer all the questions, but do the best you can. Try to get as many right as possible. Be careful not to go so fast that you make mistakes. Do not spend too much time on any one question. No questions about the test will be answered by the examiner after the test begins.

Do not turn this page until you are told to begin.

Copyright 1922 by Harcourt, Brace & World, Inc., New York
Copyright renewed 1950. Copyright in Great Britain
All rights reserved. PRINTED IN U.S.A. OET:2A

☞ ***This test is copyrighted. The reproduction of any part of it by mimeograph, hectograph, or in any other way, whether the reproductions are sold or are furnished free for use, is a violation of the copyright law.***

S. A. Higher: A

EXAMINATION BEGINS HERE:

1. The opposite of hate is (?)
   1 enemy, 2 fear, 3 love, 4 friend, 5 joy ..... ( )
2. If 3 pencils cost 5 cents, how many pencils can be bought for 50 cents? ..... ( )
3. A bird does not always have (?)
   1 wings, 2 eyes, 3 feet, 4 a nest, 5 a bill ..... ( )
4. The opposite of honor is (?)
   1 glory, 2 disgrace, 3 cowardice, 4 fear, 5 defeat ..... ( )
5. A fox most resembles a (?)
   1 wolf, 2 goat, 3 pig, 4 tiger, 5 cat ..... ( )
6. Quiet is related to sound in the same way that darkness is related to (?)
   1 a cellar, 2 sunlight, 3 noise, 4 stillness, 5 loud ..... ( )
7. A party consisted of a man and his wife, his two sons and their wives, and four children in each son's family. How many were there in the party? ..... ( )
8. A tree always has (?)
   1 leaves, 2 fruit, 3 buds, 4 roots, 5 a shadow ..... ( )
9. The opposite of economical is (?)
   1 cheap, 2 stingy, 3 extravagant, 4 value, 5 rich ..... ( )
10. Silver is more costly than iron because it is (?)
    1 heavier, 2 scarcer, 3 whiter, 4 harder, 5 prettier ..... ( )
11. Which one of the six statements below tells the meaning of the following proverb? "The early bird catches the worm." ..... ( )

    1. Don't do the impossible.
    2. Weeping is bad for the eyes.
    3. Don't worry over troubles before they come.
    4. Early birds like worms best.
    5. Prompt persons often secure advantages over tardy ones.
    6. It is foolish to fret about things we can't help.

12. Which statement above tells the meaning of this proverb? "Don't cry over spilt milk." .... ( )
13. Which statement above explains this proverb? "Don't cross a bridge till you get to it." .... ( )
14. An electric light is related to a candle as an automobile is to (?)
    1 a carriage, 2 electricity, 3 a tire, 4 speed, 5 glow ..... ( )
15. If a boy can run at the rate of 6 feet in $\frac{1}{4}$ of a second, how many feet can he run in 10 seconds? ( )
16. A meal always involves (?)
    1 a table, 2 dishes, 3 hunger, 4 food, 5 water ..... ( )
17. Of the five words below, four are alike in a certain way. Which is the one not like these four?
    1 bend, 2 shave, 3 chop, 4 whittle, 5 shear ..... ( )
18. The opposite of never is (?)
    1 often, 2 sometimes, 3 occasionally, 4 always, 5 frequently ..... ( )
19. A clock is related to time as a thermometer is to (?)
    1 a watch, 2 warm, 3 a bulb, 4 mercury, 5 temperature ..... ( )
20. Which word makes the truest sentence? Men are (?) shorter than their wives.
    1 always, 2 usually, 3 much, 4 rarely, 5 never ..... ( )
21. One number is wrong in the following series. What should that number be?
    1 4 2 5 3 6 4 7 5 9 6 9 ..... ( )
22. If the first two statements following are true, the third is (?) All members of this club are Republicans. Smith is not a Republican. Smith is a member of this club.
    1 true, 2 false, 3 not certain ..... ( )
23. A contest always has (?)
    1 an umpire, 2 opponents, 3 spectators, 4 applause, 5 victory ..... ( )
24. Which number in this series appears a second time nearest the beginning?
    6 4 5 3 7 8 0 9 5 9 8 8 6 5 4 7 3 0 8 9 1 ..... ( )
25. The moon is related to the earth as the earth is to (?)
    1 Mars, 2 the sun, 3 clouds, 4 stars, 5 the universe ..... ( )
26. Which word makes the truest sentence? Fathers are (?) wiser than their sons.
    1 always, 2 usually, 3 much, 4 rarely, 5 never ..... ( )

27. The opposite of awkward is (?)
1 strong, 2 pretty, 3 short, 4 graceful, 5 swift ..... ( )

28. A mother is always (?) than her daughter.
1 wiser, 2 taller, 3 stouter, 4 older, 5 more wrinkled ..... ( )

29. Which one of the six statements below tells the meaning of the following proverb? "The burnt child dreads the fire." ..... ( )

1. Frivolity flourishes when authority is absent.
2. Unhappy experiences teach us to be careful.
3. A thing must be tried before we know its value.
4. A meal is judged by the dessert.
5. Small animals never play in the presence of large ones.
6. Children suffer more from heat than grown people.

30. Which statement above explains this proverb? "When the cat is away, the mice will play." ( )

31. Which statement above explains this proverb? "The proof of the pudding is in the eating." ( )

32. If the settlement of a difference is made by mutual concession, it is called a (?)
1 promise, 2 compromise, 3 injunction, 4 coercion, 5 restoration ..... ( )

33. What is related to di ase as carefulness is to accident?
1 doctor, 2 sur y, 3 medicine, 4 hospital, 5 sanitation ..... ( )

34. Of the five things below, four are alike in a certain way. Which is the one not like these four?
1 smuggle, 2 steal, 3 bribe, 4 cheat, 5 sell ..... ( )

35. If 10 boxes full of apples weigh 400 pounds, and each box when empty weighs 4 pounds, how many pounds do all the apples weigh? ..... ( )

36. The opposite of hope is (?)
1 faith, 2 misery, 3 sorrow, 4 despair, 5 hate ..... ( )

37. If all the odd-numbered letters in the alphabet were crossed out, what would be the tenth letter not crossed out? Print it. *Do not mark the alphabet.*
A B C D E F G H I J K L M N O P Q R S T U V W X Y Z ..... ( )

38. What letter in the word SUPERFLUOUS is the same number in the word (counting from the beginning) as it is in the alphabet? Print it ..... ( )

39. What people say about a person constitutes his (?)
1 character, 2 gossip, 3 reputation, 4 disposition, 5 personality ..... ( )

40. If $2\frac{1}{2}$ yards of cloth cost 30 cents, how many cents will 10 yards cost? ..... ( )

41. If the words below were arranged to make a good sentence, with what letter would the second word of the sentence begin? Make it like a printed capital.
same means big large the as ..... ( )

42. If the first two statements following are true, the third is (?) George is older than Frank. James is older than George. Frank is younger than James.
1 true, 2 false, 3 not certain ..... ( )

43. Suppose the first and second letters in the word CONSTITUTIONAL were interchanged, also the third and fourth letters, the fifth and sixth, etc. Print the letter that would then be the twelfth letter counting to the right ..... ( )

44. One number is wrong in the following series. What should that number be?
0 1 3 6 10 15 21 28 34 ..... ( )

45. If $4\frac{1}{2}$ yards of cloth cost 90 cents, how many cents will $2\frac{1}{2}$ yards cost? ..... ( )

46. A man's influence in a community should depend upon his (?)
1 wealth, 2 dignity, 3 wisdom, 4 ambition, 5 political power ..... ( )

47. What is related to few as ordinary is to exceptional?
1 none, 2 some, 3 many, 4 less, 5 more ..... ( )

48. The opposite of treacherous is (?)
1 friendly, 2 brave, 3 wise, 4 cowardly, 5 loyal ..... ( )

49. Which one of the five words below is most unlike the other four?
1 good, 2 large, 3 red, 4 walk, 5 thick ..... ( )

50. If the first two statements following are true, the third is (?) Some of Brown's friends are Baptists. Some of Brown's friends are dentists. Some of Brown's friends are Baptist dentists.
1 true, 2 false, 3 not certain ..... ( )

51. How many of the following words can be made from the letters in the word LARGEST, using any letter any number of times?
great, stagger, grasses, trestle, struggle, rattle, garage, strangle ..... ( )

52. The statement that the moon is made of green cheese is (?)
1 absurd, 2 misleading, 3 improbable, 4 unfair, 5 wicked ..... ( )

 Do not stop. Go on with the next page.

53. Of the five things following, four are alike in a certain way. Which is the one not like these four?
1 tar, 2 snow, 3 soot, 4 ebony, 5 coal..... ( )

54. What is related to a cube in the same way in which a circle is related to a square?
1 circumference, 2 sphere, 3 corners, 4 solid, 5 thickness..... ( )

55. If the following words were seen on a wall by looking in a mirror on an opposite wall, which word would appear exactly the same as if seen directly?
1 OHIO, 2 SAW, 3 NOON, 4 MOTOR, 5 OTTO..... ( )

56. If a strip of cloth 24 inches long will shrink to 22 inches when washed, how many inches long will a 36-inch strip be after shrinking?..... ( )

57. Which of the following is a trait of character?
1 personality, 2 esteem, 3 love, 4 generosity, 5 health..... ( )

58. Find the two letters in the word DOING which have just as many letters between them in the word as in the alphabet. Print the one of these letters that comes first in the alphabet.
A B C D E F G H I J K L M N O P Q R S T U V W X Y Z..... ( )

59. Revolution is related to evolution as flying is to (?)
1 birds, 2 whirling, 3 walking, 4 wings, 5 standing..... ( )

60. One number is wrong in the following series. What should that number be?
1 3 9 27 81 108..... ( )

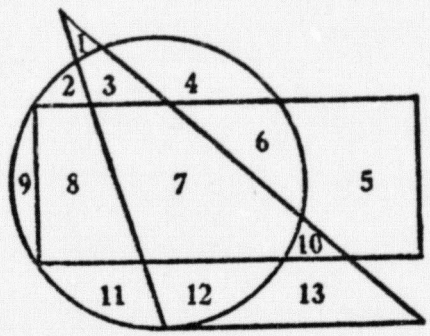
61. If Frank can ride a bicycle 30 feet while George runs 20 feet, how many feet can Frank ride while George runs 30 feet?..... ( )

62. Count each N in this series that is followed by an O next to it if the O is not followed by a T next to it. Tell how many N's you count.
N O N T Q M N O T M O N O O N Q M N N O Q N O T O N A M O N O M..... ( )

63. A man who is averse to change is said to be (?)
1 democratic, 2 radical, 3 conservative, 4 anarchistic, 5 liberal..... ( )

64. Print the letter which is the fourth letter to the left of the letter which is midway between O and S in the alphabet..... ( )

65. What number is in the space which is in the rectangle and in the triangle but not in the circle? ( )



66. What number is in the same geometrical figure or figures as the number 8?..... ( )

67. How many spaces are there that are in any two but only two geometrical figures?..... ( )

68. A surface is related to a line as a line is to (?)
1 solid, 2 plane, 3 curve, 4 point, 5 string..... ( )

69. If the first two statements following are true, the third is (?) One cannot become a good violinist without much practice. Charles practices much on the violin. Charles will become a good violinist.
1 true, 2 false, 3 not certain..... ( )

70. If the words below were arranged to make the best sentence, with what letter would the last word of the sentence end? Print the letter as a capital.
sincerity traits courtesy character of desirable and are..... ( )

71. A man who is influenced in making a decision by preconceived opinions is said to be (?)
1 influential, 2 prejudiced, 3 hypocritical, 4 decisive, 5 impartial..... ( )

72. A hotel serves a mixture of 2 parts cream and 3 parts milk. How many pints of cream will it take to make 15 pints of the mixture?..... ( )

73. What is related to blood as physics is to motion?
1 temperature, 2 veins, 3 body, 4 physiology, 5 geography..... ( )

74. A statement the meaning of which is not definite is said to be (?)
1 erroneous, 2 doubtful, 3 ambiguous, 4 distorted, 5 hypothetical..... ( )

75. If a wire 20 inches long is to be cut so that one piece is $\frac{3}{5}$ as long as the other piece, how many inches long must the shorter piece be?..... ( )

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

FILED
DEC 11 47 AM '73
U.S. DISTRICT COURT
NEW HAVEN, CONN.

FIREBIRD SOCIETY, ET AL. :
:
v. : CIVIL NO. 15876
:
MEMBERS OF THE BOARD OF :
FIRE COMMISSIONERS, ET AL. :

ORDER

Counsel for the parties to this suit state that the order hereinafter set is not agreed to but is acquiesced in by all the parties to the suit. It is further stipulated that the order is final and binding and that none of the parties shall appeal from it. Any state statutes, municipal ordinances and regulations of the city commissions in conflict with the terms of this order are null and void to the extent necessary for compliance with the terms of this order.

NOW BE IT ORDERED AND ADJUDGED AS FOLLOWS:

A. Definitions

1. "Minorities" as used in this order means blacks and Hispanics as set forth in the Complaint, paragraph 3(a).

2. "The Parties" as used in this order means the plaintiffs, the defendants, and the intervenors to this action.

3. "Test" is used in this order as defined in 29 C.F.R. § 1607.2 (1973).

4. The defendants will undertake and bear the cost of an affirmative action program to increase the number of minorities in the Department of Fire Services. In preparation of any new lists for appointments to the Department, plaintiffs and defendants will undertake a joint recruiting plan. The details of this plan will be worked out jointly by the plaintiffs and defendants, and be subject to the approval of the Court. The plan will include, among others, the following features:

5. The parties will undertake to disseminate to the largest possible number of prospective minority applicants for the Department, the defendants' goals of increasing minority representation at all levels in the Department. This will include the terms of this order as set forth below, including increased opportunity for hiring of minorities, and increased opportunities for promotion of minorities within the Department.

6. The defendants will actively cooperate with the plaintiffs in establishing a recruitment program so long as recruitment activities do not interfere with the Fire Department's primary duties of extinguishing and preventing fires. Said program will include appointing a special recruiting officer from among the plaintiffs as an acting lieutenant, with lieutenant's pay and responsibilities. The special recruiting officer will report directly to the Chief or the

Assistant Chief designated by the Chief. This special Fire Department recruiting officer shall, subject to the authority of the designated Assistant Chief, be in charge of recruiting efforts in the minority community and will have authority subject to the approval of said Assistant Chief to assign men to specific recruiting activities during the recruiting period. The Department will also assign plaintiffs when available to give speeches, conduct interviews and perform other functions.

7. Recruitmobile. The Department will have a recruitmobile which will be staffed with available minority members of the department. The recruitmobile will go to minority neighborhoods to publicize examinations, answer any questions would-be applicants might have and distribute examination notices to all interested individuals.

8. Neighborhood Offices. The Department will establish information centers in predominantly minority neighborhoods during the recruiting period. These centers will be staffed by minority members and other members of the Department, who will be responsible for answering questions and distributing notices and applications.

9. Newspaper and Radio Advertising. The Department will run a vigorous advertising campaign in newspapers. With respect to radio stations and television shows, the Department will make use of public information time granted by those media.

10. Tests. The Department will move as soon as possible to develop an entrance test which will meet the requirements of 42 U.S.C. § 2000(e), et seq. Until the goal set forth in paragraph 12 below has been met, the Department shall submit each entrance test to counsel for the plaintiffs at least four weeks before administering the test. The contents of the test will be kept secret and confidential by all parties concerned. The Commission will keep all records required under federal laws and regulations and will promptly provide counsel for the plaintiffs with copies of said records as they are compiled.

11. Hiring. In order to achieve rapid substantial minority representation in the Department, while not displacing any men already hired, the Department shall hire at least 16 of the next 24 firefighters from among qualified minority group applicants.

12. Thereafter, the Department shall hire at least one minority applicant for every non-minority applicant until the total number of minority privates in the Department is 75. New substitute firemen lists may have to be compiled from time to time in order to meet the guidelines of this paragraph.

13. Thereafter, appointment shall be made in compliance with the provisions of 42 U.S.C. § 2000(e), et seq.

D. Promotions

14. Not later than April 1, 1974, defendants will compile and submit to the Court a proposed new lieutenants' eligibility list. The Court shall review the tests, the results of said tests, and the eligibility list for evidence of good faith.

15. In view of seven existing vacancies at the rank of Captain within the Department, plaintiffs agree to the immediate lifting of the Temporary Restraining Order of October 5, 1973, as subsequently extended by the Court, with respect to seven men appointed but not yet assigned to the rank of Captain. These men are Francis McDonough, Joseph Capette, Leonard Guerrera, William Ryan, Kenneth Quinn, Robert Gilhuly, and George Erhler. With respect to the 11 men appointed for whom assignments are not yet available, as vacancies arise, any party may apply to the Court for a modification of this order pursuant to paragraph 23 hereof. The parties also agree to the lifting of the restraining order with respect to the probationary firemen sworn into office on September 24, 1973 and the two acting probationary firemen joining the Department after the institution of this suit.

16. On April 1, 1974, providing that the defendants have shown good faith in complying with provisions of this order up to that time, then the Temporary Restraining Order as to the men appointed but not yet assigned to the rank of Captain will be lifted and assignment of these men may occur as vacancies arise in the rank of Captain.

17. Defendants will make a good faith effort to increase minority representation in the rank of Captain. Defendants will schedule a new examination for the rank of Captain only after a reasonable number of minority lieutenants have become eligible for promotion to the rank of Captain, and in any event, no earlier than May 1, 1975.

18. All promotional tests given after February 15, 1974 shall meet the requirements of 42 U.S.C. § 2000(e), et seq. The Commission will keep all records required under federal laws and regulations and will promptly provide counsel for the plaintiffs with copies of said records as they are compiled.

E. Time in Grade

19. Lieutenants. Effective immediately, any private may take the lieutenant's examination 30 months after his appointment to the Department and if qualified, may be permanently assigned to lieutenant's duties 36 months after his initial appointment to the Department.

20. Other Officers. Any officer of the Department may take the examination for the next higher rank after 12 months at the rank below the one for which the examination is given.

F. Damages

21. If, on October 1, 1975, defendants have complied with the terms of this order, plaintiffs will waive their claim for actual or exemplary damages, including back pay.

G. Costs

22. The parties reserve the right to move for an award of costs, including reasonable attorneys' fees pursuant to 42 U.S.C. § 2000e5(k). The parties reserve the right to oppose this request. The parties agree that any dispute over an award of reasonable attorneys' fees will not impinge on the spirit or effectiveness of this order, nor on their compliance with it.

H. Continuing Jurisdiction of the Court

23. The Court will retain continuing jurisdiction over this suit pending a showing or compliance with all of the terms of this order. Upon a showing of good cause, and upon due notice to all parties, or upon agreement of the parties, any provision of this order may be amended or modified by an order of this Court or any court of competent jurisdiction.

Dated at New Haven, Connecticut, this 5th day of December, 1973.

Robert C. Zampano
United States District Judge

ORDER OF AUGUST 30, 1974

FILED
U.S. DIST. CT.
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

FIREBIRD SOCIETY, ET AL	:	
VS.	:	CIVIL NO. 15876
MEMBERS OF THE BOARD OF FIRE COMMISSIONERS, ET AL	:	

ORDER

The plaintiffs herein having filed this class action, in which action the plaintiffs have claimed relief from alleged discrimination on the basis of race and national origin by the defendants in the hiring and promotion practices within the New Haven Department of Fire Services, and the defendants having denied that there was any discrimination in any hiring or promotional practices, and certain interested members of the New Haven Department of Fire Services having participated as intervenors in this action and being hereby permitted to intervene; and

All parties having agreed and admitted that this court has jurisdiction over this action and that the court has the power to fashion a remedy; and

Counsel for the parties to this suit state that the order hereinafter set forth is not agreed to but is acquiesced in by all of the parties to the suit in order to end this litigation.

NOW THEREFORE, it is

1. ORDERED, that this Court's temporary restraining Order

of October 5, 1973, as extended and modified by later orders of the Court is hereby terminated; and it is further

2. ORDERED, that this Court's Order of December 5, 1973, is hereby terminated; and it is further

3. ORDERED, that any State statutes, municipal ordinances and regulations of the City Commissions in conflict with the terms of this Order are null and void to the extent necessary for compliance with the terms of this Order; and it is further

4. ORDERED:

(a) That the term "Minorities" as used in this Order means blacks and hispanics as set forth in the Complaint, Paragraph 3(a);

(b) That "The Parties" as used in this Order means the plaintiffs, the defendants and the intervenors to this action;

(c) That "Test" is used in this Order as defined in 29CFR Section 1607.2 (1973); and it is further

5. ORDERED: That the City of New Haven will follow the following procedure with respect to the hiring of new fire-fighters:

(a) Tests. The City of New Haven will move as soon as possible to develop an entrance test which will meet the requirements of 42 U.S.C. Sec. 2000(e), et seq. Until the goals set forth in Paragraph 5(b) and 5(c) below have been met, the City shall submit the results of each entrance test to counsel for the plaintiffs at least ten days before public release of the eligibility list. These results will be kept secret and

confidential by all parties concerned. The Commission will keep all future records required under federal laws and regulations, and on request will furnish relevant records to plaintiffs' counsel at least ten days before public release.

(b) Hiring. In order to achieve rapid substantial minority representation in the Department, while not displacing any men already hired, at least 16 of the next 24 firefighters assigned shall be from among qualified minority group applicants.

(c) Thereafter, the Department shall hire at least one minority applicant for every non-minority applicant until the total number of minority privates in the Department is 75. New substitute firemen lists may have to be compiled from time to time in order to meet the guidelines of this paragraph. In compiling new substitute firemen lists, the Department shall take whatever reasonable steps are necessary to insure that adequate numbers of minorities are available and qualified for appointment, including but not limited to the procedures set out in that portion of the Court's Order of December 5, 1973, dealing with recruitment.

(d) Thereafter, appointments shall be made in compliance with the provisions of 42 U.S.C. Sec. 2000(e), et seq., and it is further

6. ORDERED, with respect to promotions:

(a) The eligibility list to be used by the Department of Fire Service for promotion to the rank of Lieutenant shall be as set forth in Exhibit "A" attached hereto.

(b) All promotions to the rank of Lieutenant shall be made in the order set forth in the eligibility list attached hereto as Exhibit "A" and this list shall expire on or before August 20, 1976, but prior to the expiration of this list at least 28 appointments shall be made therefrom.

(c) No examination for promotion to the rank of Captain shall be given if any of the first 22 persons appointed to the rank of Lieutenant from the above list is ineligible to take such examination on account of insufficient time in grade at the rank of Lieutenant.

(d) All promotional tests given hereafter shall meet the requirements of 42 U.S.C. Sec. 2000(e), et seq. The Commission will keep all records required under federal laws and regulations, and, until the goals set forth in Paragraph 5(c) are met, on request the Commission will furnish to plaintiffs' counsel at least ten days before public release all relevant records, including a copy of the test, eligibility lists, test results, and model answers.

(e) This litigation shall not be deemed res judicata with respect to future examinations for or promotions to the rank of Captain, and all the parties shall be as free to make such claims as they deem appropriate with respect to such examinations and promotions as if this action had not been brought, and it is further

7. ORDERED, with respect to Time in Grade:

(a) Lieutenants. Effective immediately, any private may take the lieutenant's examination 30 months after his appointment to the Department and if qualified, may be permanently assigned to lieutenant's duties 36 months after his initial appointment to the Department.

(b) Other Officers. Any officer of the Department may take the examination for the next higher rank after 12 months at the rank below the one for which the examination is given, and it is further

8. ORDERED, that the parties reserve the right to move for an award of costs, including reasonable attorneys' fees pursuant to 42 U.S.C. Sec. 2000(e) (5) (k). The parties reserve the right to oppose this request. The parties agree that any dispute over an award of reasonable attorneys' fees will not impinge on the spirit or effectiveness of this order, nor on their compliance with it. Any party shall have the right to appeal from the Court's Order with respect to costs and attorneys' fees.

Dated at New Haven, Connecticut, this 30th day of August, 1974.

Robert C. Zampano

Robert C. Zampano
United States District Judge

Martin O'Connor

George Boucher

William Muggleton

Earl Geyer

Boris Starzyk

Robert Foley

Donald Wilson

Robert Baker

Peter Fertig

Charles Goodson

Donald Hennessey

Walter Furgalack

George Sweeney

Paul Looney

Joseph Quirk

Robert Miller

Edward FitzGerald

Robert Callahan

Charles Holness

Thomas Urban

Anthony Gambardella

Tim Watkins

William Gambardella

George Horn

Timothy King

Robert LaCroix

Frank Martin

George Price

Donald Acarra

Raymond Cassista

Knud Sondergaard

Raymond Luyckx

John Cleary

Richard Williams

John Sullivan

Leonard Borelli

James Coady

Edward Houde

John Mulligan

James Brandt

Kevin Donovan

John Doyle

Michael Ciuchta

James Daniel

Raymond Sullivan

Paul Tescione

Eugene Calzetta

Kenneth Goodale

Fred Geier

Nicholas Candido

Thomas Knudsen

John Bohan

Joseph Lockwood

Marcus Sullivan

Martin Goodson

Gerald Enright

Robert Whelan

John Blasiak

Marion Robinson

Marine Glass

John Malone

Martin King

Peter Serletti

Leigh Jackson

Peter Martin

David McDonald

Noel Lambert

order entered on January 25, 1974, objectors' motion is to be overruled to the extent that it goes beyond an application for leave to intervene as parties plaintiff.

[14] Having considered the Motion to Stay Determination to Permit Additional Discovery as amended, the court is of the opinion that such motion is due to be overruled. Objectors' counsel served their appearance in this action on March 19, 1974, one month prior to the hearing and made their request for a stay on April 29, 1974. The court is aware that the defendant Board produced a substantial number of documents in response to Interrogatories and Request for Production to the defendant Board and knows that plaintiff's counsel obtained access to the records and files of some brokers in the Jefferson County area who were not named as defendants in the complaint filed on November 21, 1972. Rather than have discovery begin anew in this action after the hearing to consider the proposed settlement, the court will overrule objectors' motion, as amended, to stay the determination.

[15] I find the sum of $52,500 to be a reasonable attorney's fee for the services performed by James L. Shores of the firm of Johnston & Shores as attorney for the plaintiff and that defendants are due to pay to said attorney the sum of $52,500 at the time provided, for such payment in the Agreement of Settlement of this action.

Judgment shall be entered in keeping with the proposed final judgment of which the members of the class were given notice and in keeping with this opinion, which judgment shall include a description of the class included in the judgment and by exhibit, or otherwise, the names of the persons excluded. Attorneys for the original plaintiff and the defendants are directed to submit, after consultation with the clerk, a form of such judgment, giving particular attention to the list of persons excluded from the class and to a listing of the parties defendant bound by the judgment.

The FIREBIRD SOCIETY OF NEW HAVEN, INC., et al., Plaintiffs,

v.

The NEW HAVEN BOARD OF FIRE COMMISSIONERS et al.

Civ. No. 15876.

United States District Court,
D. Connecticut.
Feb. 3, 1975.

Civil rights action was brought challenging the hiring and promotional practices within city fire department. After entry of decree which for all practical purposes had effect of settling litigation, a motion to intervene was made on behalf of nonprofit corporation and non-minority firemen. The District Court, Zampano, J., held that the applicants for intervention had not shown necessary compelling reason for allowance of motion made three weeks after entry of order and that the applicants had been fairly represented by existing parties so that no good reason for intervention was shown.

Motion denied.

1. Civil Rights ⇨46

Settlement of civil rights action challenging hiring and promotional practices within city fire department by providing interim priority relief to qualified members of minority who had been previously denied opportunity for advancement as result of examinations

which had racially disproportionate impact while leaving the merit system intact for all future promotions was neither forbidden by constitution nor the equal employment provisions of Civil Rights Act. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

2. Federal Civil Procedure ⇐337

Where neither non-profit corporation nor non-minority firemen, seeking to intervene after entry of court order virtually settling civil rights action challenging hiring and promotional practices in city fire department, was adversely affected by court order and did not possess a protectible interest in the assignment list into which names of minority firemen were inserted pursuant to order settling suit, applicants lacked prerequisite interest in subject matter of action and could not intervene as a matter of right. Fed.Rules Civ. Proc. rule 24(a), 28 U.S.C.A.

3. Federal Civil Procedure ⇐320

Absent unusual and compelling circumstances, application to intervene is untimely if litigation has been concluded and judgment entered. Fed.Rules Civ. Proc. rule 24(a, b), 28 U.S.C.A.

4. Federal Civil Procedure ⇐320

Organization, formed for the purpose of intervening in civil rights action challenging hiring and promotional practices within city fire department failed to show that there were unusual and compelling circumstances which would render timely its motion to intervene filed three weeks after entry of order terminating case. Fed.Rules Civ. Proc. rule 24(a, b), 28 U.S.C.A.; Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

5. Federal Civil Procedure ⇐337

Motion of nonprofit organization composed of certain members of city fire department to intervene in civil rights action challenging hiring and promotional practices within department pursuant to motion filed three weeks after entry of order terminating suit would be denied on additional ground that the applicants' rights had been adequately represented by existing party and the intervenor and no good reason had been shown to allow intervention. Fed.Rules Civ.Proc. rule 24(b), 28 U.S.C.A.

Michael P. Koskoff, Brideport, Conn., David N. Rosen, New Haven, Conn., for plaintiffs.

Roger J. Frechette, Corp. Counsel, Frank S. Meadow, Asst. Corp. Counsel, New Haven, Conn., for defendants.

W. Paul Flynn, New Haven, Conn., for intervenors.

J. Daniel Sagarin, Bridgeport, Conn., for applicants for intervention.

RULING ON MOTION TO INTERVENE

ZAMPANO, District Judge.

On August 30, 1974, this Court approved and issued a decree which for all practical purposes had the effect of settling before trial the instant lawsuit. All the parties to the action "acquiesced in" and agreed not to appeal the Court's order "in order to end this litigation." Subsequently, on September 20, 1974, the Applicants for Intervention filed motions which seek:

(a) to intervene as a matter of right under Rule 24(a), F.R.Civ.P.; or

(b) permission to intervene under Rule 24(b), F.R.Civ.P.;

(c) to reopen the judgment and vacate the August 30th Order of this Court;

(d) to participate in this litigation, presumably after judgment is reopened, by raising certain defenses and cross-claims to the action; and

(e) to appeal the Order of August 30th to the Court of Appeals for the Second Circuit.

BEST COPY AVAILABLE

I

On October 5, 1973, this Civil Rights Act suit for declaratory and injunctive relief as well as damages was commenced to challenge the constitutionality of the hiring and promotional procedures with respect to minority groups in the New Haven Department of Fire Services ("Department"). The plaintiffs were the Firebird Society of New Haven, Inc. ("Firebirds"), an organization composed of all the black firemen in the Department, several members of that organization, and certain past and prospective minority applicants to the Department. The defendants included the New Haven Board of Fire Commissioners, the Civil Service Commission of the City of New Haven, the Fire Department and its Chief, and the City of New Haven and its Mayor. Upon motion, 17 white captains in the Department who had been appointed but not assigned to duty were permitted to intervene as defendants. Jurisdiction was premised on 28 U.S.C. § 1343(3) and 42 U.S.C. § 2000e-5(f).

The complaint, filed after the plaintiffs exhausted their administrative remedies with the Equal Employment Opportunity Commission and received a "right to sue" letter from the United States Department of Justice, see 42 U.S.C. § 2000e-5(f), levelled a broad attack on almost all aspects of the hiring and promotional practices of the Department on the ground of discrimination based on race and national origin. The selection of firemen was alleged to have a racially disproportionate impact because the written examinations were not subject to an impartial professional validity study, were not job-related, and were improperly prepared, evaluated and graded. In addition, it was claimed that discrimination was enhanced by the Department's minimum requirements regarding age, education, height, weight, and prior arrests.

The plaintiffs further contended that there was a policy of discriminating against black firemen in promotional practices. As with the entry procedures, the plaintiffs focused on the written exam, particularly the testing methods utilized for the rank of lieutenant. They also condemned the "time in grade" requirement for promotion and the so-called "efficiency rating" both of which, it was asserted, were merely devices to discriminate against black firemen.

Extensive relief was requested which included, in addition to damages and back pay, the following:

(a) A revised system for promotions under which qualified applicants are to be selected only from the class of plaintiffs, as openings arise, until they are represented as officers in the Department in proportion to their number among residents of the City of New Haven; or

(b) A revised system for promotions under which qualified applicants are to be promoted alternately, one white and one minority from the class of plaintiffs, as openings arise, until they are represented as officers in the New Haven Fire Department in proportion to their number among residents of the City of New Haven; and

(c) A revised system of hiring under which qualified applicants will only be hired from the class of plaintiffs, as openings arise, until they are represented in the Department in proportion to their number among residents of New Haven; or

(d) A complete plan for promotions, recruitment and hiring which includes as part of any proportional hiring plan that such plan shall apply to all hiring done after filing of plaintiffs' complaint with the EEOC;

(e) The granting of seniority to plaintiffs and members of their class back to the date that they first applied for a position in the New Haven Fire Department regardless of whether or not they passed the hiring selection criteria which have been determined to have been discriminatory.

II

When this action was commenced, the plaintiffs moved for immediate injunctive relief, claiming that on the basis of statistics alone, they could demonstrate a prima facie case of discrimination. Cf. Morrow v. Crisler, 479 F.2d 960 (5 Cir. 1973) (en banc); Carter v. Gallagher, 452 F.2d 315 (8 Cir. 1971), cert. denied, 406 U.S. 950, 92 S.Ct. 2045, 32 L.Ed. 338 (1972).

Among other things, the plaintiffs pointed out that the minority population of New Haven was 30 percent, and that none of the 502 men employed by the Department was Hispanic and 18, or less than 4 percent, were black. There was one black lieutenant out of 61, no black captain out of 34, and no black officer in any higher command position. Thus, of the 107 officers in the Department only one was black, and he held the lowest rank above private.

The plaintiffs further expressed confidence that at an evidentiary hearing they could prove a pattern of willful discrimination against minorities in the Department that extended over a period of many years. Serious claims and examples of intentional discrimination were alleged, supported in part by affidavits. In addition, the plaintiffs maintained that the defendants were attempting to block effective judicial redress by recently appointing 17 white captains from the eligible list just prior to the expiration of that list, and by selecting 18 new trainees (only one of whom was black) from a "substitute list" then in existence. Thus, if the plaintiffs prevailed in their lawsuit, they calculated that the relief they sought would have no practical effect for from one to eight years.

Counsel for the defendants, on the other hand, denied each of the plaintiffs' material allegations. However, with commendable candor, they admitted that the present hiring and promotional methods did have certain "deficiencies" which needed correction. They stressed that the entire matter was under review, and that experts had been retained by the City to design new exams which would meet all legal requirements. In order to avoid a costly, lengthy, and probably divisive lawsuit, they requested that this Court provide guidance to the parties so that their differences might be resolved.

Thereupon, it was agreed as follows:

1. That temporary injunctive relief would issue restraining the defendants from assigning, hiring or promoting anyone not in the plaintiffs' class, and from administering any written exams in conjunction with promotions within the Department;

2. That the 17 newly appointed white captains and the new trainees would not be assigned to duty;

3. That, in order to disseminate notice of the lawsuit and of the right of interested persons to intervene in the action, copies of the Court's order and a list of all the plaintiffs' claims for relief would be posted in each of the City's firehouses, together with a covering notice advising all firemen of the lawsuit and suggesting that all interested firemen "wishing to intervene in this lawsuit are entitled to intervene and should seek counsel immediately to be present at a pre-trial hearing in the District Court at 2 P.M., Monday, October 15, 1973;"

4. That all discovery procedures and evidentiary hearings would be indefinitely postponed until every avenue of settlement was exhausted; and

5. That the plaintiffs would prepare a list of the issues and recommendations for settlement to serve as a guide for future conferences.

III

The next conference was held on October 15, 1973. In addition to counsel of record, Attorney W. Paul Flynn appeared and stated that although he was counsel for the New Haven Fire Fighters Local No. 825 ("Union"), he was

not formally entering an appearance for the Union. However, he did wish to file a motion to intervene in behalf of the 17 white captains whose assignment to duty was enjoined by this Court's order of October 5, 1973. The motion to intervene was orally granted and thereafter Attorney Flynn played an active role in the negotiations.

The basic issues were defined by the plaintiffs as follows:

1. What amount of compensatory and punitive damages should the defendants pay as a result of past discrimination?

2. In the light of past discrimination, what concessions would the defendants make with respect to the "time in grade" restrictions for promotions?

3. What steps toward recruitment would the defendants undertake to increase the number of minorities in the Department?

4. When and how could the defendants devise new entrance and promotional exams to conform to the requirement of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e?

5. What means would be employed to achieve substantial minority representation in the Department?

6. What method should be utilized to increase minority representation in the ranks of lieutenant and captain?

7. What attorney's fees should be awarded to plaintiffs' counsel?

IV

Ten months later, due to the extraordinary efforts of counsel and the cooperation of their respective clients, all the aforementioned issues were finally resolved without trial when this Court issued its decree of August 30, 1974.

However desirable, it is an impossible task to recollect and recount herein each and every material factor which culminated in the entry of the final order. The several court hearings and the numerous orders filed by this Court are of course a matter of record. In addition, however, there were 23 chambers conferences, some of which extended long into the evening. These meetings were held with the knowledge and approval of all counsel of record and included, at one time or another: the attorneys for the parties and intervening defendants, high ranking officials of the City, officers of the Union, individuals named as defendants including the Chairman and several members of the Board of Fire Commissioners, certain white firemen who were not named as parties, the Chief of the Department, and others.

In order to encourage and maintain the free, open and candid exchange of ideas, these meetings were regarded by all in attendance to be "off the record" discussions. Despite this, the news media, due to the inevitable "leaks," widely reported the scheduling of these conferences and many of the doings therein. Moreover, counsel were required to make progress reports to their clients and to obtain their consent to the innumerable preliminary agreements which formed the basis for the final decree. Since so many persons were necessarily involved in the negotiations which led to a final settlement, it is difficult to assume that the nature and content of the chambers meetings were secret. In fact, on occasions, counsel informed the Court that at union meetings or while they visited firehouses throughout the City, they were "grilled" on the latest developments and felt obliged to respond.

From the outset it was evident that amicable resolution of the issues required many concessions by the plaintiffs. After the first round of negotiations, the plaintiffs agreed to drop their demand for back pay and for exemplary and actual damages. However, the plaintiffs insisted that minorities occupy 25 percent of the privates' rank, 15 percent of the lieutenants' rank, 15 percent of the captains' rank, 10 percent of the Battalion Chiefs' rank, and 15 percent of "other supervisory"

positions within a period of four years. In addition, the plaintiffs refused to agree to modify the existing orders which restrained the defendants from filling existing vacancies in the Department. It appeared clear to the Court that the defendants would not accede to these demands without substantial modifications, particularly with respect to positions above the rank of private.

Nevertheless, significant progress toward the resolution of most of the issues in the case was made when, after a series of meetings, the parties acquiesced in this Court's Order of December 5, 1973. First, a detailed plan for the recruitment of minorities into the Department was established. Second, the Department was ordered to develop entrance and promotional tests as soon as possible which meet the requirements of 42 U.S.C. § 2000e et seq. Third, in order to achieve substantial minority representation in the Department, while not displacing any men already employed, the Department was required to hire at least 16 of the next 24 firefighters from among qualified minority group applicants and, thereafter, to hire at least one minority applicant for every non-minority applicant until the total number of minority privates reaches 75. Fourth, since seven vacancies existed at the rank of captain, the Court modified its injunction to permit seven white firemen (who had been appointed but not assigned) to fill these positions. Fifth, the Court permitted the 18 probationary firemen (who had been sworn into office but not assigned) to be assigned to regular duty. Sixth, the "time in grade" requirement was modified to provide that any private may take the lieutenant's examination 30 months after his appointment and "other officers" may take the examination for the next higher rank after 12 months at the rank below the one for which the examination is given. Seventh, the defendants promised to exercise "good faith" to insure that minorities would have representation in the ranks of lieutenant and captain. Finally, the Order incorporated the agreement of the parties that the plaintiffs would waive their claims for damages but not attorneys' fees.

The major question remaining at this time concerned the amount of "good faith" on promotions that the defendants had to demonstrate before the suit would be settled. After much negotiation, the plaintiffs agreed not to prosecute the action if seven qualified blacks were selected out of the next 21 lieutenants to be appointed within a two-year period and if, in addition, one qualified black captain was assigned within a reasonable time thereafter. At this Court's request, an "in camera" agreement was drafted which merely placed in writing the plaintiffs' unilateral "promise" not to proceed with the lawsuit in the event seven minority lieutenants and one minority captain were appointed as a result of the next lieutenants' and captains' examinations. It is important to point out that the examinations in mind were the new tests mandated by this Court's Order of December 5, 1973. It was anticipated that the defendants' experts would prepare these validated examinations prior to February 15, 1974.

Soon thereafter, however, the defendants reported they would be unable to develop validated exams for some time to come. They suggested that the testing for lieutenants proceed as scheduled with the understanding that the results thereof not be disclosed or acted upon until the plaintiffs were afforded the opportunity to renew the suit and address appropriate motions to the Court in the event seven minorities were not within the first 21 eligible for promotion. The plaintiffs agreed and the Court's Order of December 5, 1973 was amended.

Another problem arose when, in violation of this Court's injunction, the Board of Fire Commissioners promoted two white firemen to the rank of lieu-

CONNECTICUT STATE LIBRARY

tenant. The matter was eventually resolved after a series of conferences which included counsel, the members of the Board of Fire Commissioners, officials of the Union, the two promoted firemen, and the Court. The two men were permitted to take their assignments as lieutenants with the reservation that the promotions were open to challenge if plaintiffs should activate the lawsuit in the future.

The lieutenants' examination proceeded on schedule and on May 22, 1974, the defendants presented the results to the Court and the plaintiffs. While seven blacks were demonstrated to be qualified, none appeared in the top 21 rankings. The plaintiffs reiterated their original contentions that the test had a substantial discriminatory impact on minorities and exercised their right to activate the lawsuit. As a result, the injunction covering promotion to the rank of lieutenant was continued, a discovery schedule was agreed upon, and a trial date was set by the Court for September 15, 1974.

While discovery procedures were underway, counsel for the defendants and the intervenors urged the Court on several occasions to reopen settlement negotiations. The Court did so. While perhaps no specific representation was made, the Court is satisfied that it was induced to resume negotiations because high level officials of the City and Union, as well as the party defendants, firmly believed trial should be avoided if any avenue for settlement remained open.

Intensive negotiations commenced again. The main obstacle to a settlement was removed when the plaintiffs agreed to have seven qualified black firemen on the lieutenants' eligibility list "slotted into positions" which would insure their appointments within the two-year period before the list expired by law. Based on their knowledge and experience, the defendants were reasonably certain that not more than 21 lieutenants would be assigned within the specified period. When the Court expressed the desire that the seven "displaced" white firemen be protected, the parties agreed to the provision in the final decree that the eligibility list shall not expire until "at least 28 appointments shall be made thereon." Whites were placed on the list strictly in order of their combined promotional scores. The blacks were also listed in order of their scores, and their names inserted at intervals in positions 4, 7, 10, 13, 16, 19 and 22 on the eligibility list.

All the agreements arrived at by the parties after ten months of negotiations were incorporated into this Court's Order of August 30, 1974, which decree was "acquiesced in by all of the parties to the suit in order to end this litigation."

V

The Court must consider the motions filed by the Applicants for Intervention (hereinafter "applicants") in light of the background just set forth.

The applicants are the Firefighter's Committee to Preserve Civil Service, Inc., a non-profit corporation organized under Connecticut law after the entry of this Court's Order on August 30, 1974, and certain non-minority firemen within the New Haven Department of Fire Services in the ranks from private to battalion chief. The sole purpose for the formation of the corporate applicant was to intervene in this lawsuit and to set aside the Court's final decree in order to "preserve a system of promotions within and appointments to the New Haven Department of Fire Services based upon merit and not upon considerations of race." The individual applicants are three captains, two battalion chiefs, one lieutenant, a fireman not on the lieutenants' eligibility list, and nine privates, two of whom are at the top of the current eligibility list and seven of whom rank beyond the 28th position on the list.

At the outset, the Court notes its difficulty in determining what "interest" the applicants seek to protect by intervention. No one of the applicants is adversely affected by the Court's Order: the two privates at the top of the eligibility list will be assigned promptly; the other eight privates would most probably not be assigned even if the seven minorities were removed from the list; and, the remaining individuals either hold the rank of lieutenant or a higher rank. Nor do the applicants who seek to intervene possess a protectible "interest" in the assignment list into which the names of the minority firemen were inserted. The present list was compiled only as a result of the plaintiffs' consent to the lifting of the injunction and to the administration of the non-validated examination, as a starting point in a program designed to ameliorate the continuing effects of past discrimination. If the Court's Order were set aside, there is now every reason to believe that appointments and assignments to the rank of lieutenant would be enjoined until validated tests were developed and a new eligibility list drawn from the results thereof. Thus, were the applicants permitted to intervene and to reopen the Court's Order of August 30, 1974, there would necessarily be a nullification of the present eligibility list, and whatever "interest" the applicants had in this list would disappear.

Relying on the principles enunciated in Bridgeport Guardians, Inc. v. Members of Bridgeport Civil Service Commission, 482 F.2d 1333, 1342 (2 Cir. 1973), the applicants assert they are opposed to the implementation of a "quota promotional remedy" which is proscribed by various provisions in the Charter of the City of New Haven, the Civil Service Rules, and the Union's collective bargaining agreement with the Department.

[1, 2] In *Bridgeport Guardians*, the Second Circuit condemned a remedial system of promotion whereby a certain ratio of promotions had to come from the minority personnel until 15 percent of the officers were minorities. The Circuit Court reasoned:

> . . . the imposition of quotas will obviously discriminate against those Whites who have embarked upon a police career with the expectation of advancement only to be now thwarted because of their color alone. The impact of the quota upon these men would be harsh and can only exacerbate rather than diminish racial attitudes. 482 F.2d at 1341.

Here, however, no quota has been imposed. Rather, the terms of the settlement in the case at bar simply grant interim priority relief to qualified members of a minority who have previously been denied equal opportunity for advancement as a result of examinations which had racially disproportionate impact. The merit system remains intact for all future promotions. In the Court's opinion, this remedy is neither forbidden by the Constitution nor prohibited by Title VII of the Civil Rights Act of 1964. See e. g., Boston Chapter, N.A.A.C.P., Inc. v. Beecher, 504 F.2d 1017 (1 Cir. 1974); Rios v. Enterprise Ass'n Steamfitters Local 638, 501 F.2d 622 (2 Cir. 1974); N.A.A.C.P. v. Allen, 493 F.2d 614, 618-20 (5 Cir. 1974); cf. Morrow v. Crisler, supra; Vulcan Society v. C.S.C., 490 F.2d 387 (2 Cir. 1973). Since the applicants lack the prerequisite interest in the subject matter of this action, they may not intervene as of right pursuant to Rule 24(a), F.R. Civ.P.

[3, 4] The applicants have failed in other respects to demonstrate that they have a right to intervene under Rule 24 (a) or, alternatively, that they should be permitted to intervene pursuant to Rule 24(b). Both Rules provide for intervention only upon "timely application." The present motions were neither served nor filed until three weeks after the entry of the Order terminating the case. Absent unusual and compelling

circumstances, an application to intervene is untimely if the litigation has been concluded and judgment entered. See, e. g., Allegheny Corp. v. Kirby, 344 F.2d 571, 574 (2 Cir. 1965), cert. dismissed as improvidently granted, 384 U.S. 28, 86 S.Ct. 1250, 16 L.Ed.2d 335 (1966); United States v. Blue Chip Stamp Company, 272 F.Supp. 432, 435-441 (D.C.Cal.1967), aff'd sub nom. Thrifty Shoppers Scrip Co. v. United States, 389 U.S. 580, 88 S.Ct. 693, 19 L.Ed.2d 781 (1968); Slusarski v. United States Lines Co., 23 F.R.D. 388, 390 (E.D.Pa.1961). No such circumstances exist here.

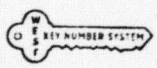
It seems clear to the Court that the applicants had ample notice of the pendency of the lawsuit and the nature of the relief claimed. The three documents posted in early October, 1973, in each firehouse, which no one of the applicants denies seeing or reading, included: 1) a notice which stated that the lawsuit involved a claim of racial discrimination with respect to "promotions" and invited each interested fireman to intervene in the action; 2) a copy of the complete list of the remedies sought by the plaintiffs, with references throughout to "promotions" and "system for promotions;" and 3) a copy of this Court's preliminary injunction, enjoining the promotion of "anyone not in plaintiffs' class" and restraining all "written exams in conjunction with promotions." Although an attorney who claimed to speak for the Union appeared and filed a motion to intervene on behalf of 17 white captains, none of the applicants sought to enter into the case at that time. In addition, the Court's Order of December 5, 1973, which was a matter of public record and was widely reported by the news media in the area, contained several sections dealing with future hiring and promotions in the Department. If the applicants were truly disturbed by the prospect of a "quota promotional remedy," they might have sought intervention at that time. Instead, the applicants have slept on whatever rights to intervene they may have had and now, dissatisfied with the settlement in the case, seek to set it aside. Cf. Basle Theatres, Inc. v. Warner Bros. Pictures Distributing Corp., 24 F.R.D. 476, 477 (W.D.Pa.1959).

Furthermore, to permit the applicants to reopen this case would result in unfair delays and consequences to the parties who have relied on the settlement agreement and the negotiations which produced it. The plaintiffs have already waited almost a year and a half since commencing this suit to vindicate their rights. At all times, the parties have bargained in good faith in the belief that an amicable settlement of a potentially divisive lawsuit was in process. Moreover, during the pendency of this lawsuit, and with the acquiescence of the plaintiffs, recruitment and hiring programs were established, promotions have been made, substitute firemen have been assigned, a schedule for the development of properly validated promotional exams was reached, and procedures for administering promotional examinations in the interim were agreed on and implemented. This complex web of acts in reliance upon the settlement negotiations would have to be unwoven if the case were reopened, and further delay in meeting the City's need for the appointment of new fire department officers would necessarily ensue.

[5] Finally, the Court denies the motion to intervene on the ground that the applicants' rights were adequately represented by the existing parties and the intervenors. As stated hereinbefore, the final decree was agreed upon only after the most intensive negotiations, with all aspects of hiring and promotions within the Department being carefully weighed and reviewed, by officials of the City, the Civil Service Commission and the Department as well as by the 17 white captains who were permitted to intervene. The Court is satisfied that, under the circumstances of this

case, no good reason has been shown to allow intervention; the rights of every fireman within the Department have been fully considered and protected. Cf. Afro American Patrolmens League v. Duck, 503 F.2d 294, 298 (6 Cir. 1974); United States v. Carroll County Board of Education, 427 F.2d 141, 142 (5 Cir. 1970).

Accordingly, the applicant's motion to intervene and all related motions are denied.



Wayne Oliver BOOTH, Individually and on behalf of all others similarly situated

v.

PRINCE GEORGE'S COUNTY, MARYLAND, et al.

Civ. No. Y-74-811.

United States District Court, D. Maryland.

Jan. 23, 1975.

Supplemental Opinion March 21, 1975.

Black applicant for position as a police officer with county police department brought class action seeking declaratory and equitable relief from certain alleged discriminatory employment practices. Defendants moved to dismiss and plaintiffs moved for preliminary injunction and to have action certified as a class action. The District Court, Joseph H. Young, J., held that Fourteenth Amendment gives a right of action against local government units for discriminating in employment on racial grounds, that a purportedly representative plaintiff must be a member of the class he seeks to represent, that plaintiff did not have standing to maintain suit as a class action, that absent certification of suit as a class action the court could not retain case to permit substitution of a named plaintiff who in fact had standing and that preliminary injunction would not issue.

Case dismissed; preliminary injunction denied.

1. Federal Civil Procedure ⇐2461

The summary judgment statutes are procedural, not jurisdictional, and they do not create a cause of action in and of themselves. 28 U.S.C.A. §§ 2201, 2202.

2. Civil Rights ⇐13.7

Neither county nor county personnel board, sued for allegedly discriminating against blacks seeking jobs with the county police department, were a "person" within the meaning of statute creating right of action in an individual whose federal rights are infringed by any person acting under color of state law. 42 U.S.C.A. § 1983.

3. Courts ⇐323.4(3)

In a "true" class action the claims of the plaintiff class can be aggregated to meet the $10,000 jurisdictional requirement for federal question jurisdiction. 28 U.S.C.A. § 1331; Fed.Rules Civ.Proc. rule 23(b)(2), 28 U.S.C.A.

4. Civil Rights ⇐13.7

Fourteenth Amendment gives right of action against local governmental units for discriminating in employment on racial grounds. 28 U.S.C.A. § 1343(3); U.S.C.A.Const. Amend. 14.

5. Federal Civil Procedure ⇐1327

While public officials do possess certain qualified immunity, it was premature, on motion to dismiss, to determine the degree to which the various county officials, sued for allegedly discriminating against blacks who applied for positions with county police department, could draw the cloak of qualified immunity around themselves. U.S.C.A. Const. Amend. 14.

FILED
DEC 23 1975
U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

FIREBIRD SOCIETY, ET AL	)	CIVIL NO. 15876
V.	)	
MEMBERS OF THE BOARD OF FIRE COMMISSIONERS, ET AL	)	SEPTEMBER 29, 1975

AFFIDAVIT OF MICHAEL P. KOSKOFF

MICHAEL P. KOSKOFF, being first duly sworn, deposes and says:

I. EDUCATIONAL BACKGROUND

I received my Bachelor of Arts degree in 1963 and my J.D. degree from the University of Connecticut School of Law in 1966. While in law school I received special awards for academic distinction in the fields of International Law and Criminal Law.

II. PROFESSIONAL BACKGROUND

I was admitted to practice before the courts of the State of Connecticut and the United States District Court for the District of Connecticut in 1966 and have practiced in those courts since that time.

In addition I have been admitted to practice before the bar of the United States District Court for the Southern District of New York, the Second Circuit Court of Appeals, and

the United States Supreme Court.

I hold memberships in the Bridgeport Bar Association, The Connecticut Bar Association, The Association of Trial Lawyers of America, The Connecticut Trial Lawyers Association, and The Connecticut Civil Liberties Union.

I have been a member of the Executive Committee of The Connecticut Bar Association's Section on the administration of criminal justice since 1970 and have held offices as Chairman of the Young Lawyers Section of The Connecticut Trial Lawyers Association, Chairman of the Criminal Justice Committee of The Bridgeport Bar Association, Chairman of the Committee on Medical Malpractice of The Connecticut Trial Lawyers Association and member of the Board of Directors of the Fairfield County Section of The Connecticut Civil Liberties Union.

I was a member of the faculty of the University of Bridgeport and in 1972 taught a course in the Department of Philosophy on the "Philosophy of Civil Liberties".

I have lectured in the field of medical malpractice before The Connecticut Trial Lawyers Association in Hartford (1974) and The Association of Trial Lawyers of America (ATLA) National College of Advocacy at the University of Southern California in Los Angeles (1975) and ATLA National College of Advocacy at Harvard Law School in Massachusetts (1975).

I have lectured at the Yale Law School on the topics of "Political Trials" (1972) and "Handling Employment Discrimination Cases" (1974). I have also lectured on the representation of

plaintiffs in employment discrimination cases before the annual midwinter convention of The Association of Trial Lawyers of America in Las Vegas (1973) and The North Carolina Trial Lawyers Association (1974). I have published an article in the field of employment discrimination "New Vistas in Employment Discrimination", The Connecticut Docket, December, 1973.

I was the recipient of a "Dedicated Service Award" by The National Association of Black Patrolmen in Atlanta, Georgia, in 1973 for work in the field of employment discrimination.

III. CURRENT PRACTICE

At the present time I am one of four partners in the firm of Koskoff, Koskoff, Rutkin and Bieder. Our principal office is located at 1241 Main Street, Bridgeport, Connecticut, but we maintain additional offices in Stamford and Brookfield. At the present time our firm consists of 11 lawyers, 3 legal assistants, 2 law students, 5 secretaries, 1 bookkeeper, and 1 general office worker.

Our firm specializes in litigation which comprises well over 90% of our income.

My own background for my nine years in practice has been exclusively in the field of litigation, both civil and criminal.

My time in the past three years has been divided as follows: approximately 20% of my time has been spent in the handling of medical malpractice cases, 20% in the handling of

employment discrimination cases, 20% in the handling of other forms of "complex litigation", 10% in handling criminal cases, 15% in handling ordinary civil litigation, and 10% in the handling of "pro bono publico" cases. When I represent plaintiffs in civil actions other than employment discrimination cases, I usually charge such plaintiffs on a "contingent fee basis". Fees vary in personal injury cases and medical malpractice cases between 25% and 40% of the gross recovery plus costs.

In the past year I have recovered contingent fees in such cases of $120,000 and $110,000. I have also tried to conclusion one case in the federal district court before Judge Lumbard in which no fee was recovered because of a defendant's verdict.

When I charge on a hourly basis, my rate is stated at $75.00 per hour plus expenses. The overhead of our office indicates that when any lawyer in our firm bills at less then $50.00 per hour, we are losing money. When billing is on a hourly basis, it is expected that payment will be made as bills accrue.

IV. EXPERIENCE IN EMPLOYMENT DISCRIMINATION

My epxerience in the field of employment discrimination cases includes representation of the plaintiffs in the case of Bridgeport Guardians, Inc. vs. Members of Bridgeport Civil Service Commission, 402 F. 2d 1333. That case stands as

an authoritative case in the field of employment discrimination and provided unique expertise in the field gleaned from thousands of hours of legal work. Work in that case included pretrial motions, extensive discovery, a full three-week trial, two appeals to the Second Circuit Court of Appeals, an application for certiorari, and numerous proceedings on remand extending to the present time. It has been cited as the first case of its kind brought in the District of Connecticut and one of the first brought in the United States.

At the present time our firm is handling approximately 30 employment discrimination cases. Many of these cases are brought as class actions and all require a great deal of legal work. Because all of the plaintiffs have been victimized by economic discrimination of one type or another it has been our practice to take these cases on a "contingent fee" basis. Clients are advised that we will not expect them to bear the cost of legal fees for the handling of their case. They are advised that our fees are contingent upon either voluntary settlement with the defendants or court order. It is apparent that complainants would be unable to obtain legal representation were it not for this fee arrangement.

The Bridgeport Guardians case was also taken on a contingent fee basis. In that case no fee was recovered despite thousands of hours of time which was invested and the fact that the plaintiffs prevailed in that action. This indicates the full extent of the "contingency" involved in handling these kinds

of cases.

In addition to cases in which no fees are recovered, the costliness of this litigation to our office is compounded by the following: investments of time for which no compensation is recovered; time-consuming meetings with community groups; long delays for "investigations" by the EEOC; the constant interruptions of ordinary office routine for "special" proceedings (applications for injunctive relief, complaints of harassment, etc.); constantly having to keep abreast of developments in the case law in this new and expanding field of law; keeping track of the changing employment status of our clients; and the necessity of delaying the recovery of fees until termination of the litigation, usually a matter of many years. It is also clear that we have lost clients by the alienation of large segments of the "business community" who are defendants in these cases as well as the "majority community" which neither understands nor appreciates the work done by our firm in this area.

Furthermore, in many of the cases involving neither substantial economic nor injuntive relief fees cannot be expected which would justify economically our continuing to handle these cases. It is apparent that unless adequate fees are awarded in this case, we will simply be unable to continue to handle this form of litigation.

I know from interviewing many clients with employment discrimination claims as well as from discussions with leaders in the black and Puerto Rican communities, of the great reluctance

of most law firms to handle these kinds of cases. This has resulted in widespread belief in these communities in Connecticut that lawyers either will not handle these kinds of cases or that representation will be prohibitively expensive. The result has been, from my experience, that many claimants who ultimately do find their way into our office have already lost their right to pursue their claims because of expiration of the 180 day statute of limitations on claims brought under Title VII, 42 U.S.C. 2000 (e) et. seq.

I know from discussions with other lawyers in Connecticut that the reason for their reluctance to handle these cases are an unwillingness to antagonize the white community, lack of familiarity with the federal laws and procedures, the complexity of the litigation, and the general belief that it is not economically feasible to handle employment discrimination cases.

I have noted an additional reluctance to pursue claims against municipal employees because of fear of political and/or police retaliation and unwillingness to interfere with the operation of the Civil Service. It is also apparent that in Connecticut among the worst offenders in the area of employment discrimination are municipal employers.

V. WORK ON FIREBIRDS CASE

An enormous amount of time and effort have been expended in the handling of Firebirds Society, et al v. Members of the Board of Fire Commissioners, et al. Much of this time has been expended on short notice for "emergency" meetings or

"crisis" calls from clients as well as for the preparation of complaint, motions, hearings, meetings with counsel, clients, and the court, injunctions, legal briefs, and an appeal to the Second Circuit Court of Appeals, all of which have interfered with the handling and speedy processing of other extremely lucrative forms of litigation. I have recorded over 300 hours of time I have spent working on this case. This represents a minimum of the actual time expended and does not include work by co-counsel, work by secretaries, law clerks, and paralegal workers, telephone calls, many conferences with clients, or any of the general time spent keeping abreast of developments in the field of employment discrimination law or texts and literature in the field of testing.

This work has been expended over a period of years beginning in April of 1973. To date no fees have been recovered from anyone for handling this case.

The defendants have consistantly refused to pay fees and have denied their obligation to do so under Title VII.

In my experience the skills, legal expertise, complexity, and overall handling of employment discrimination cases are most like the handling of federal antitrust actions. I ask that feesbe awarded commensurate with the type of case, result obtained, and overall purpose of Title VII in providing for attornies' fees so that the federal employment discrimination statutes will be privately enforced.

MICHAEL P. KOSKOFF

STATE OF CONNECTICUT:
COUNTY OF FAIRFIELD : ss. Bridgeport, September 29, 1975

Subscribed and sworn to before me this 29th day of September, 1975, at Bridgeport, Connecticut.

NOTARY PUBLIC

My commission expires

FILED
DEC 23 3 44 PM '75
U. S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

THE FIREBIRD SOCIETY OF NEW HAVEN, ET AL	
VS.	CIVIL NO. 15876
MEMBERS OF BOARD OF FIRE COMMISSIONERS, ET AL	

AFFIDAVIT OF DAVID N. ROSEN

DAVID N. ROSEN, being first duly sworn, deposes and says:

1. I have been an attorney for six years. I received my B.A. degree from Harvard College in 1965, Phi Beta Kappa and magna cum laude. In 1965-66 I studied at the London School of Economics as an Honorary Woodrow Wilson Fellow. I received my LL.B. from Yale Law School in 1969. At Yale Law School I was a member of the editorial board of the Yale Law Journal.

2. In 1969-70 I was a Reginald Heber Smith Fellow assigned to the New Haven Legal Assistance Association and was a Tutor in Law at the Yale Law School. Since April, 1970, I have been in private practice, first as a sole practitioner and, since October, 1972, in partnership with Attorney Edward J. Dolan.

3. My practice has involved litigation almost exclusively and I have been counsel in numerous federal court cases at all levels. Reported cases in which I have been counsel include: 1) Roe v. Norton, ____ U.S. _____, 45 L.Ed. 268

(1975); 2) United States v. Jenkins, et al, 496 F.2d. 57 (2d Cir. 1974) (in district court only); 3) Roe v. Norton, 365 F. Supp. 65 (D. Conn. 1973); 4) Connecticut Union of Welfare Employees v. White, 55 F.R.D. 481 (D. Conn. 1972); 5) Connecticut Union of Welfare Employees v. White, 357 F.Supp. 1378 (D. Conn. 1973); 6) In re Cardassi, 351 F.Supp 1080 (1972).

4. I have handled numerous employment discrimination cases, both under Title VII and 42 U.S.C. Section 1983, and I have lectured on employment discrimination at Yale Law School and University of Connecticut Law School. I have also lectured on "Examination of the Expert Witness in an Employment Discrimination Case" as a member of the faculty of the National College of Advocacy in Cambridge, Massachusetts.

5. My partner, Edward J. Dolan, has also been an attorney for six years. He attended Boston College (B.A. 1966) and University of Connecticut Law School (J.D. 1969). He has a background of three years' experience in poverty law as a staff attorney with the New Haven Legal Assistance Association and has lectured on the subjects of family law and juvenile courts at numerous conferences and seminars. He has for the past two years been a member of the faculty of the University of New Haven. He has been a member of the Board of Directors of the New Haven Legal Assistance Association and is presently President of that Association.

6. I have spent 340 hours on this case and Attorney Dolan 15 hours according to time records compiled as the case progressed.

7. The time charged does not include time spent by law student interns who participated actively in all phases of the case and spent over 100 hours drafting briefs and other papers. It also does not include a substantial amount of time spent on informal discussions, lunch meetings, general research which was relevant to this case and such matters as responding to inquiries from the press and other lawyers about the case.

8. Our office's standard billing rate for federal court cases in which we are billing on an hourly basis is $65.00 per hour.

9. This case was necessarily done on a contingency basis. Our individual clients were only a tiny proportion of the class we represented. They were in no position to guarantee payment of our fees even if we won the case, as we did. We therefore undertook the case with no assurance of any payment whatever and no limit on the amount of time that we would be required to spend on the case.

10. Not only was our fee contingent on our winning the case but the defendants made it clear early on that they opposed any award of attorneys' fees. Therefore the case was taken on a double contingency: first, that we would prevail on the merits and second, that we would prevail with respect to attorneys' fees.

11. We also knew that any fee we did receive we would get only at the end of what promised to be protracted litigation

for example, Title VII provides for a six-month waiting period before suit is permitted to be filed. As a result, the case has already put a substantial financial strain on our office because we are a small office and this case represents a substantial investment of firm time.

12. The extent to which involvement in this case has precluded our taking other work can be seen by simple inspection of the time involved. During the pendency of this litigation, in addition to the substantial amount of public interest work we ordinarily do for free, such as work for the Connecticut Civil Liberties Union as cooperating counsel, I have spent over 1300 hours in my role as unpaid court-appointed counsel in Roe v. Norton. In addition, my partner and I between us have spent approximately 1000 hours as court-appointed counsel in the so-called B.L.A. bank robbery case. U.S.A. v. Alston and State of Connecticut v. Alston. The time our office has had to devote to fee generating cases has thus been severely limited, and the time we have spent on the Firebirds case represents a substantial fraction of that time. As a result, we have been forced to turn down many cases of all types because of lack of time.

David Rosen

DAVID N. ROSEN

STATE OF CONNECTICUT:
COUNTY OF NEW HAVEN : ss. New Haven, December 22, 1975

Personally appeared before me DAVID N. ROSEN and swore to the truth of this affidavit.

Ed Dolan
COMMISSIONER OF THE SUPERIOR COURT

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

FIREBIRD SOCIETY, ET AL,	)	
	)	
PLAINTIFFS	)	CIVIL NO. 15876
	)	
V.	)	
	)	
MEMBERS OF THE BOARD OF FIRE COMMISSIONERS, ET AL,	)	JANUARY 27, 1976
	)	
DEFENDANTS	)	

TIME SCHEDULE OF MICHAEL P. KOSKOFF

I did not begin keeping a contemporaneous time log in connection with this case until September, 1973, when I began keeping a daily log. The following estimates are made of time spent prior to September of 1973:

I. Time Estimates Prior to September, 1973	Hours
First meetings with clients	3.0
Conference with Attorney Rosen re: handling of case	.5
Meetings with Attorney Rosen with clients	2
Travel	1
Drafting EEOC complaints	2.5
Conferences with clients re: filing of complaints	3
Conferences with Attorney Rosen coordinating activities	3
Travel	2

II. Following September, 1973

		Hours
9/21/73	Telephone calls with law student interim and David Rosen, Esquire	.5
9/25/73	Conference with John Jessep re: research on Title VII	1
9/25/73 - 10/3/73	Research by John Jessep	6
9/26/73	Meeting at Rosen's office	2.5
9/26/73	Travel	1
9/29/73 (Sat.)	Draft complaint	6
10/2/73	Editing of memorandum	2
10/3/73	Preparation of complaint	5
10/4/73	Preparation of supporting papers	4
10/5/73	Conference with Richard Barett and D. Rosen re: affidavit	3
	Travel	2.5
	Preparation of complaint and papers for filing	2.5
	Hearing before Judge Zampano	1.5
10/8/73	Work on settlement proposal and telephone conversations	2
10/11/73	Preparation for meeting with city, conference with Atty. Rosen	6
10/15/73	Preparation for chambers conference with Judge Zampano	5
10/16/73	Research re: Title VII	1
10/15/73	Travel	1
10/18/73	Preparation for meeting with court	2
10/19/73	Chambers conference with Judge Zampano	5
	Transportation	1
10/22/73	Work on file	2
10/25/73	Work on attorneys' fees by Attorney John Jessep, KKR&B	7
10/26/73	Work by MPK on quota hiring	8
10/29/73	Preparation for chambers conference with Judge Zampano	5
	Transportation	1
10/31/73	Preparation for meeting with City Attorney	3
11/5/73	Meeting with City Attorney Attorney Rosen and chambers conference	6
	Travel	1
11/12/73	Preparation for chambers conference	4
	Travel	1
11/20/73	Meetings with Attorney Rosen and clients	3
	Chambers conference	1
	Travel	1
11/26/73	Meeting with Attorney Grazioso, law students, and D. Rosen	2
	Travel	1

		HOURS
11/28/73	Chambers conference and meeting with clients	4.5
	Travel	1
12/3/73	Client conference re: settlement	3.5
	Travel	1
1/21/74	Chambers conference	2
	Travel	1
1/28/74	Chambers conference	3
	Travel	1
2/4/74	Chambers conference	1.5
	Travel	1
3/20/74	Conference with Attorney Rosen and chambers conference	2
	Travel	1
4/22/74	Chambers conference and preparation	3
	Travel	1
5/17/74	Conference with Attorney Rosen	.5
5/19/74	Discussion with Attorney Rosen	.5
5/20/74	Chambers conference and preparation	6.5
	Travel	1
6/3/74	Chambers conference and preparation	1.5
	Travel	1
7/11/74	Preparation for deposition of Chief	3
7/19/74	Meeting with Attorney Rosen	2.5
8/8/74	Chambers conference and preparation	3
	Travel	1
8/30/74	Chambers conference and prepartion	2
	Travel	1
8/21/74		
8/22/74		
8/23/74	Telephone calls	1
9/12/74	Conference with Attorney Rosen and chambers conference	1
	Travel	1
9/30/74	Preparation for motion to intervene	6
10/1/74	Preparation and hearing motion to intervene	4.5
	Travel	1
10/14/74	Preparation of brief with Attorney Rosen	6.5
	Travel	1
10/15/74	Preparation of brief on intervention	5
10/16/74	Preparation of brief on intervention	7
10/17/74	Preparation of brief on intervention	4.5
10/18/74	Proofreading brief	1
2/4/75	Conference with Attorney Rosen	.5
2/6/75	Preparation for hearing re: stay on appeal	2
2/27/75	Conference with clients and Attorney Rosen	2.5
	Travel	1
	Preparation	1.5
3/13/75	Conference with Attorney Rosen	1
3/14/75	Preparation for hearing re: stay in court of appeals	2

		HOURS
3/18/75	Stay hearing in court of appeals	.5
	Travel	4.5
	Conference with Attorney Rosen	3
3/28/75	Conference with Attorney Rosen	4.5
4/3/75	Preparation of brief for court of appeals	7
4/4/75	Preparation of brief for court of appeals	9
	Editing of brief by Attorney Katherine Emmett of KKR&B	9
4/14/75	Preparation for argument in Court of Appeals	2
4/15/75	Argument in Court of Appeals	1
	Travel	4
7/30/75	Conference with Attorney Rosen, Attorney Emmett, etc. re: attorneys' fees	5
	Also: Attorney Emmett's time	5
9/18/75	Chambers conference -	2
	Travel	1
1/12/76	Chambers conference	2.5
	Also: Theodore Koskoff	2.5
	Travel	1
1/26/76	Confernce re: attorneys' fees	2
	TOTAL:	289.0

The above hourly breakdown does not include hours spent keeping abreast of Title VII law and much of the time spent since the issurance of the court's order for work with regard to the award of attornies' fees.

RESPECTFULLY SUBMITTED,

BY _____
MICHAEL P. KOSKOFF
KOSKOFF, KOSKOFF, RUTKIN & BIEDER
1241 Main Street
Bridgeport, Connecticut 06604
Attorney for the Plaintiffs

CERTIFICATION:

This is to certify that a copy of the foregoing has been sent this day, January 28, 1976, postage prepaid, to Attorney W. Paul Flynn, of 132 Temple Street, New Haven, Connecticut and to Frank S. Meadow, Esquire, Corporation Counsel, of 215 Church Street, New Haven, Connecticut.

_____
MICHAEL P. KOSKOFF

FILED
FEB [illegible] '76
[illegible] COURT
[illegible]

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

FIREBIRD SOCIETY, ET AL, PLAINTIFFS :
:
VS. : CIVIL NO. 15876
:
MEMBERS OF THE BOARD OF FIRE :
COMMISSIONERS, ET AL., DEFENDANTS :

TIME SCHEDULE OF DAVID N. ROSEN

I. Time Spent Before Establishment of Contemporaneous Time Logs.

I did not begin keeping a contemporaneous time log in connection with this case until shortly before the Complaint was filed. The following time represents estimates I made in September, 1973, (when I began keeping a daily log) of time I had already spent on this case. It was my intention at the time I made these estimates to estimate conservatively--that is to underestimate the time spent.

	HOURS
Meetings with clients and Attorney Koskoff	2.5
Meetings with clients at Antillean Manor Social Club	4.5
Meetings with clients at my office	4.0
Drafting EEOC Complaint	7.0
Phone calls to EEOC and Connecticut Commission on Human Rights and Opportunities concerning EEOC policy of deferring to State agency.	1.0
Research on general issues concerning Title VII	3.0
Correspondence to EEOC, Connecticut Commission on Human Rights and Opportunities, our clients, and expert on employment testing	1.0
Phone calls to clients re: arranging for signing EEOC Complaint	.8
Conferences with Attorney Koskoff regarding strategy, law, filing of EEOC Complaint, timing of filing a federal complaint.	4.0
Travel	1.0

II. Logged Time

The following time is based on the contemporaneous entries in a log established for this case.

		HOURS
9/21/73	Phone calls to United States Department of Justice, Washington, D.C. and EEOC, Boston, Massachusetts. Conference with law student intern, phone call Attorney Koskoff	3.0
9/24/73	Phone calls to law student intern, Attorney Koskoff, District Director EEOC (Everett O. Ware)	0.5
9/25/73	Conference law student intern regarding Complaint and Memorandum	1.5
9/26/73	Conference Attorney Koskoff, law student intern re: Complaint and Memorandum for Preliminary Injunction	2.5
9/27/73	Phone call United States Department of Justice, Washington, D.C.; draft and send telegram to Department of Justice	0.6
9/28/73	Conference law student intern re: Complaint, draft Complaint	4.0
9/28/73	Conference at Civil Service with Frank Grazioso	1.0
9/29/73	Draft Complaint	6.0
	Travel	1.0
10/01/73	Draft memo for Preliminary Injunction	10.0
10/02/73	Draft memo for Preliminary Injunction	6.0
10/03/73	Preparation of Complaint and Supporting documents	5.0
	Travel	1.0
10/04/73	Prepare Complaint, Preliminary Injunction Memorandum and First Interrogatories	4.0
	Travel	1.0
10/05/73	Travel to see Professor Richard Barrett	2.5
	Conference with Barrett, preparation of Affidavit regarding departmental entrance exam	3.0
10/05/73	Prepare Complaint and supporting papers for filing	3.0
10/05/73	File Complaint and Hearing re: Temporary Restraining Order	1.5
10/07/73	Organizing material to be filed and preparation of settlement plan	2.0
10/08/73	Work on settlement plan and phone call to Attorney Koskoff	1.5
10/09/73	Work on settlement plan	1.0
10/10/72	Phone calls to clients and United States District Court in Detroit re: Stamps v. Detroit Edison	0.7
10/11/73	Conference with Attorney Koskoff re: settlement strategy, research Title VII	5.5
	Travel to conference	1.0
10/14/73	Conference with Attorney Ann Hill re: State Welfare Employment Suit	.5
10/15/73	Conference with Judge Zampano and preparation for conference	5.5

10/16/73	Research Title VII law and confer with law students	1.5
10/17/73	Research re: Law of Attorneys Fees in Title VII	2.0
10/18/73	Confer with clients	1.5
10/18/73	Research re: Attorneys Fees	2.0
10/19/73	Meeting with Judge Zampano and preparation for meeting	5.5
10/27/73	Draft memo re: Attorneys Fees	4.5
10/27/73	Research re: Quota Hiring and Promotions in Title VII	3.0
10/29/73	Conference Judge Zampano and preparation for conference	4.5
10/30/73	Telephone conference with law student	0.4
10/31/73	Work on Settlement Plan	1.0
	Edit Attorneys Fee Memo	0.5
11/02/73	Drafting memo re: Settlement	2.2
11/05/73	Conference with Attorney Keyes and conference with Attorney Koskoff	3.0
	Preparation and conference with Judge Zampano	3.0
11/08/73	Research re: Title VII	3.0
11/12/73	Conference with Judge Zampano and preparation	4.0
11/20/73	Conference with Judge Zampano	1.0
	Draft proposed Order	1.5
	Conference with clients	1.5
11/26/73	Conference with Attorney Grazioso, preparation and conference with law students and Attorney Koskoff	3.5
11/28/73	Conference with clients and conference with Judge Zampano	4.5
11/30/73	Telephone conference with law student	0.4
12/01/73	Telephone conference with law student	0.3
12/03/73	Preparation for and conference with Judge Zampano	4.0
12/05/73	Review Court Order, confer with clients re Order	3.5
01/17/74	Investigation re: expert on economic value of Court Order	1.0
01/21/74	Discussion with actuary re: economic value of Court Order	0.4
01/21/74	Conference with Judge Zampano and preparation for conference	2.0
01/22/74	Telephone conference with client	0.3
01/28/74	Conference with Judge Zampano and preparation for conference	3.0
02/04/74	Conference with Judge Zampano and preparation for conference	1.8
03/20/74	Conference with Judge Zampano and preparation for conference	2.0
03/25/74	Meeting with Civil Service Commissioners	1.5
04/22/74	Conference with Judge Zampano and preparation for conference	3.0
05/06/74	Phone conferences Attorney Grazioso and Attorney Koskoff	0.4
05/17/74	Conference Attorney Koskoff	0.3
05/19/74	Conference Attorney Koskoff	0.4
05/20/74	Study test results, draft Order, Conference with Judge Zampano	6.5
05/21/74	Prepare Order and take to Court	0.3

06/03/74	Conference with Judge Zampano and preparation for conference	1.5
07/03/74	Review Disclosure material	2.5
07/11/74	Conference Attorney Koskoff and preparation of depositions	3.0
	Travel	1.0
07/15/74	Examine material re: Motions to Produce Documents	2.0
	Phone calls to clients	0.3
07/17/74	Conference with clients	1.0
07/19/74	Conference with Attorney Koskoff re: Discovery and trial preparation	2.5
	Travel	1.0
08/06/74	Phone call to clients	0.2
08/07/74	Phone call to clients	0.4
08/08/74	Phone call to clients	0.2
08/08/74	Meeting with Judge Zampano and preparation for meeting	2.5
08/09/74	Draft final Order	2.5
08/09/74	Review docket sheet at Federal Court	0.5
08/21/74	Phone call Attorney Koskoff	0.3
08/22/74	Phone call Attorney Koskoff	0.3
08/23/74	Phone call Attorney Koskoff	0.4
08/27/74	Review and organize file	1.2
08/29/74	Conference with Attorney W.P. Flynn and review final draft of Court Order	1.5
08/30/74	Prepare final draft of Court Order	1.5
	Conference with Judge Zampano and preparation for conference	1.5
09/03/74	Explain Court Order to clients and confer with them	1.5
09/12/74	Meeting with Judge Zampano and conference with Attorney Koskoff	1.0
09/13/74	Research law regarding intervention	0.2
09/20/74	Prepare for hearing on Motion to Intervene	1.5
09/30/74	Prepare for hearing on Motion to Intervene	3.5
10/01/74	Prepare for hearing on Motion to Intervene	1.5
10/01/74	Hearing on Motion to Intervene	2.8
10/14/74	Draft Brief in opposition to intervention	7.0
10/15/74	Draft Brief in opposition to intervention	1.0
10/16/74	Edit Brief in opposition to intervention	1.5
10/17/74	Edit Brief in oppositionto intervention	1.0
02/03/75	Phone conference with client	0.2
02/04/75	Review Court opinion	0.5
02/04/75	Confer with Attorney Koskoff	0.5
02/05/75	Review law regarding Stay on Appeal	0.2
02/06/75	Review Stay Application and prepare Opposition thereto	2.0
02/26/75	Prepare hearing regarding Stay on Appeal	1.5
02/26/75	Travel	1.0
02/27/75	Hearing regarding Stay on Appeal	3.0
	Appearance at New Haven Superior Court, McCarthy, J., regarding possible State Court attack on Court's judgment	0.6
02/27/75	Conference with clients and conference with Attorney Koskoff	2.5

03/13/75	Telephone call to Court of Appeals and Conference with Attorney Koskoff	1.0
03/14/75	Organize file and prepare for Stay hearing	2.0
03/18/75	Stay Hearing and Hearing on Motion for Expedited Appeal in Court of Appeals	0.5
03/18/75	Travel	4.5
03/18/75	Confer with Attorney Koskoff	3.0
03/28/75	Confer with Attorney Koskoff re: Appellate Brief	4.5
	Travel	1.0
03/29/75	Confer with law student re: work on Appellate Brief	1.0
03/30/75	Conference (telephone) with law student re: Appellate Brief	0.3
03/31/75	Telephone Conference with law student re: Appellate Brief	0.5
04/01/75	Draft Appellate Brief	6.0
04/02/75	Draft Appellate Brief	4.0
04/03/75	Draft Appellate Brief	10.0
04/04/75	Draft Appellate Brief	10.0
04/14/75	Prepare for oral argument in Court of Appeals	3.0
04/15/75	Argument in Court of Appeals	1.0
04/15/75	Travel	4.0
04/15/75	Confer with clients	3.0
07/08/75	Telephone conferences with other attorneys and research re: attorneys fees	2.5
07/09/75	Telephone conference with other attorneys and research re: attorneys fees	1.5
07/30/75	Conference Attorney Koskoff and Attorney Emmett re: attorneys fees, Brief, Affidavits, etc.	4.0
	Travel	1.0
08/05/75	Work on Expert's Affidavit re: Economic Value of Court Settlement	1.5
08/06/75	Work on Expert's Affidavit re: Economic Value of Court Settlement	0.5
08/07/75	Work on Expert's Affidavit re: Economic Value of Court Settlement	3.0
08/08/75	Work on Expert's Affidavit re: Economic Value of Court Settlement	5.0
09/03/75	Conference with Attorney Koskoff re: Attorneys fees	0.5
09/04/75	Research for Brief re: Attorneys fees	3.0
09/05/75	Research for Brief re: Attorneys fees	1.5
09/08/75	Research for Brief re: Attorneys fees	0.5
	Draft my Affidavit in Support of Attorneys Fees Application	0.7
	Prepare Time Schedule	1.0
09/09/75	Prepare Time Schedule	1.0
09/18/75	Conference with Judge Zampano and preparation for conference	2.0
11/28/75	Prepare Brief re: Attorneys fees	6.0
11/29/75	Prepare Brief re: Attorneys fees	3.5
12/04/75	Prepare Brief re: Attorneys	2.5
12/17/75	Prepare Brief re: Attorneys fees	1.5

12/18/75	Prepare Brief re: Attorneys Fees	3.5
1/12/76	Conference with Judge Zampano and preparation for conference	2.5
1/26/76	Conference with Attorney Koskoff re: Time Logs	2.0
1/26/76	Travel	1.0
	TOTAL	361.6

I swear and affirm the truth of the above statements.

Dated at New Haven this 29th day of January, 1976.

DAVID N. ROSEN

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

FIRE[illegible]OCIETY, ET AL	:	
	:	
V.	:	
	:	CIVIL ACTION NO. 15876
MEMBERS OF THE BOARD OF FIRE COMMISSIONERS, ET AL	:	

SCHEDULE OF EXPENSES AND LAW STUDENT TIME

I. Law Student Time:

Several law students worked on different phases of this case. Time records have not been kept except in one case, but I estimate the total number of law student hours to be approximately 175. Of this total 118 were spent by one student, Peter W. Sly, who kept contemporaneous records. Mr. Sly at the time he performed services in this case was a third year student at the Yale Law School, a member of the Yale Law Journal, and had worked for a legal aid office for two years prior to attending law school. He worked on the case from September through December 1973 doing investigation, research, drafting of pleadings and briefs, and he attended chambers conferences. Neither Mr. Sly nor the other students who worked on the case have been compensated for their services.

II. Expenses:

1. to Peter W. Sly for out-of-pocket expenses:	
photocopying and mileage	$ 29.60
2. photocopying	81.00
3. Professor Richard Barrett--consultation and furnishing affidavit	500.00

4. Jacob G. Miller, Deputy Sheriff, service 848.00

Total Expenses $1,493.60

Dated at New Haven, February 5, 1976.

David Rosen

DAVID N. ROSEN
265 Church Street
New Haven, Conn. 06510
(203) 787-3513

CERTIFICATION

This is to certify that a copy of the foregoing has been mailed first class mail, postage prepaid this 5th day of February, 1976 to the office of the Corporation Counsel for the City of New Haven, 161 Church Street, New Haven, Connecticut, and W. Paul Flynn, Esq., 132 Temple Street, New Haven, Conn.

DAVID N. ROSEN

FILED
DEC 23 3 44 PM '75
U.S. DISTRICT COURT
NEW HAVEN, CONN.

AFFIDAVIT OF HEIDI HARTMANN

HEIDI HARTMANN, being first duly sworn, deposes and says:

I. QUALIFICATIONS

I am an economist and a teacher of economics. I am currently visiting Assistant Professor of Economics on the Graduate Faculty of the New School for Social Research. I received the B.A. degree from Swarthmore College in 1967 (with honors), the M.Phil. degree in Economics from Yale University in 1972, and the Ph.D. degree in Economics from Yale in 1974. My areas of specialization are labor economics and the economics of discrimination. I currently teach graduate courses in both these fields. I have written several papers for publication on the economic effects of job discrimination, primarily discrimination against women; in addition, I have delivered numerous addresses to scholarly conferences on various aspects of discrimination in employment.

II. THE SOCIAL COST OF DISCRIMINATION

Ten years ago the Council of Economics Advisers to the President found that discrimination entailed substantial economic costs both to the economy as a whole and to those who are discriminated against. Those who are discriminated against suffer first because for the same skill level they earn lower salaries and experience more unemployment. Second, they are disadvantaged economically because they do not have the same skill level and

employment distribution as the majority group: in other words, they have less education and inferior jobs. In 1964, the Council of Economic Advisors estimated that if blacks with similar skill levels were paid the same as whites, the personal income of blacks in the United States would have been 12.8 billion dollars higher. If the skill level and job experience of blacks were raised to that of whites, personal income of blacks would have been 20.6 billion dollars higher.[1] Furthermore, the economy as a whole suffers losses from discrimination because it does not get the full benefit of the actual and potential skills of minority group members. With the increase in skill levels of blacks, the economy would have gained an additional 2.2 billion dollars, because of increases in productivity, etc. The total gain in the national economy would have been 23 billion dollars, or roughly 4% of gross national product.

Despite some progress since 1964 in the areas of eliminating discrimination and unequal opportunities, substantial discrimination continues to exist. Adjusting for the increase in income among blacks in the last decade, and for inflation and increase in our gross national product, in 1974 our economy probably lost approximately 3.5% of gross national product, or 49 billion

---

Footnote 1

See Economic Report of the President, 1965, and "A Memorandum of the Council of Economic Advisors," (March 26, 1965, Mimeographed), reprinted in John F. Kain, Ed. Race and Poverty (Englewood Cliffs, New Jersey: Prentice-Hall, 1969) pp. 58-59.

dollars in potential production because of discrimination against minority group members.

These figures exclude consideration of the broader social effects of such economic discrimination. The lower incomes which result from economic discrimination are recognized to be major factors contributing to the relatively high incidence of crime and instability in America's minority communities. Economic discrimination contributes, moreover, to an inability to participate equally in the political process; thus, minority neighborhoods typically have less adequate health care facilities, schools, and municipal services of all kinds. Furthermore, economic discrimination tends to perpetuate itself over time. Because of the social effects, the children of blacks who are poor are more likely to grow up disadvantaged in economic competition with the children of the more affluent. It is the children who experience the impact of poor education and family stress resulting from economic discrimination.[2]

III. METHODOLOGY

The ending of discriminatory practices against minority members by the City of New Haven Fire Department thus contributes to eliminating this personal and social loss. In estimating the benefit from the cessation of discrimination, I have adopted a conservative methodology. I estimate only the economic benefit

---

Footnote 2
See John F. Kain, ed. Race and Poverty.

to the minority group members themselves and not the economic value of the larger social benefit of increases in productivity. Nor do I attempt to place a dollar value on such intangible benefits as greater self-esteem and pride, increased stability and spending power for the minority community. I measure, that is, only the increased income minorities will experience by joining the New Haven Fire Department in fulfillment of the court's hiring and promotion order.

This is done essentially by comparing the present value of the expected income of minority group firefighters with the present value of their expected income had they earned the average income of minority group members in the New Haven area. I have chosen for the comparison group only those minorities who already have the same skill level, a high school education, as is required of firefighters; thus I am using the conservative approach of assuming no skill increases in response to greater job opportunities. I am thus calculating a figure comparable to the lowest estimate of the cost of economic discrimination in paragraph II above. Furthermore, I am using a time horizon of only 25 years, the length of time a new private is expected to stay on the job until retirement. In fact the benefits of this order may be expected to extend indefinitely since the order provides for permanent installation of non-discriminatory hiring and promotion practices.

IV. ASSUMPTIONS

In calculating the benefits expected from the court's order, I have made further assumptions. These assumptions are:

1. That the fire department will not grow in size;
2. That the ratio of officer level minority members to

officer level whites will grow only to equal but not to exceed the ratio for privates, which is seventy-five out of three hundred thirty, or 22% (and thus that there will be twenty-four minority officers out of one hundred nine total officers);

3. That the minority group members will only be hired at the rate at which attrition provides job openings--this is estimated at 20 openings per year based on a constant department size of 500 and an average tenure of 25 years per employee. Following the hiring ratios set forth in the court's order, these assumptions allow the fire department a total of six years to achieve the desired number of privates, 75. I assume the department would promote on the average only 2 minority officers per year and thus would take 12 years to reach a comparable number of minority officers, 24;

4. I also assume that the benefits accrue only to those hired or promoted in these first 12 years; that is, I do not include <u>any</u> value due to ending discrimination and hiring after there are 75 minority privates in the department. For the significance of this, conservative, assumption, see paragraph V, below.

5. I further assume that the fringe benefit package of the fire department has an additional worth of 25% of annual salary, while that of the average minority wage earner is 15%. The actual difference in fringes is probably much greater than 10%, especially if we take into consideration the stability of employment at the fire department as compared with average employment

opportunities for minorities in New Haven.

6. I further assume that all of the future firefighters hired by the Department will be male. The benefit to a white woman who would be hired would be roughly equivalent to that of a minority man, while that of a minority woman would be roughly double that of a minority man, since their alternative income is much lower than that of a minority man. If women entered the fire department in numbers roughly comparable to their proportion in the labor force, the total estimated benefit to all the new hirees would be approximately doubled.

Thus the total effect of the assumptions which I have made in calculating the value of ending discrimination in the fire department is to reduce the benefit calculated substantially below what it may reasonably be anticipated to be.

V. CALCULATION

The assumptions about the rates of hiring and promotion set out above in paragraph IV indicate that the fire department is expected to increase the number of minority privates by 58 over the next 6 years,[3] and to promote 24 minority firefighters over the next 12 years (two per year). If, in fact, the

---

Footnote 3

Of course not all of this hiring can be attributed to the effect of the order. The Department probably would have hired some minority group members in any case. I have estimated that such hiring would have occurred at the rate of 2 per year, based on a projection of the Department's performance in recent years, but assuming a somewhat increased rate of minority hiring in order to underestimate, rather than overestimate, the benefits resulting from the order.

Department has fewer openings over the next 6 years and could not approach the goal as rapidly as assumed here, the benefit I estimate will in this respect overestimate the actual benefit. However, this effect is almost certainly more than offset by the fact that the benefit that I estimate excludes any benefits to persons hired or promoted after these maximums are reached; that is, to all those affected by the order in the future because all hiring and promotion must be non-discriminatory.[4]

In measuring the benefit which will accrue to those hired and promoted, I estimated the difference between what these firefighters earn in the department and what they would have been likely to earn at alternative employment. The salary figure I used for privates was $14,930.00. This represents the salary as states in the Department's pay scale plus 25%, the estimated value of fringes. For officers, the comparable figure was $17,015.00, an average of the officers' salaries, as stated in

---

Footnote 4

For example, if by 1980, the period after which I stopped calculating benefits for new hirees, the population of New Haven is 33% minority, we can expect the fire department to become approximately 33% minority, assuming non-discriminatory hiring. Thus, because of court-ordered non-discriminatory hiring, the number of minority privates may be expected to become not 75, as is assumed here, but approximately 110, or one-third of the total number of privates.

the pay scale, weighted by the number of officers at each level (but only including officers up to and including the rank of battalion chief) plus 25% for fringes. The income figure I used for the firefighters had they not joined the Department was $9,948.00. This figure was derived from the average income of black male high school graduates in the relevant age range (18-54) in 1969 in the New Haven Standard Metropolitan Statistical Area, as reported by the 1970 census.[5] The 1969 figure is $6,223.00. This 1969 figure was updated to 1974 by applying the same growth rate to the income of blacks in New Haven as blacks across the nation experienced during that period.[6] The original figure was further augmented by applying a fringe package valued at 15% of income.

The benefit in every year is thus the difference between what a minority member in the department earns and what he or she would have been expected to earn in alternative employment (for privates this difference is $4,982.00, and for officers, it is $7,067.00), multiplied by the number of minority group

Footnote 5
United States Bureau of the Census, Census of Population, 1970, Vol. 1: Characteristics of the Population, Part 8, Connecticut, (Wash. D.C.: U.S. Government Printing Office, 1973), p. 8-877.

Footnote 6
The national average annual income of black males grew 39% from 1969 to 1974, according to data presented in U.S. Bureau of the Census, Current Population Reports, series p-60, No. 77, "Money Incomes of Families and Persons in the United States," (Washington, D.C.: United States Government Printing Office, 1975), Table F, p. 12.

members who are hired or promoted because of the order.[7] Thus for the first year, the benefit accruing to 11 privates and 2 officers is $68,936.00. For the 2nd year, these new hirees receive additional benefits, and in addition benefits accrue to all those hired as a result of the court's order at the beginning of the 2nd year, but these benefits must be discounted because they occur in the future. Benefits accrue to each person hired as a result of the court's order from the date hired throughout the balance of the 25 year period over which I have estimated the benefit. I have summed the benefits over the 25 year base period and have continuously discounted them at the rate of 6% per annum to arrive at the present value of total benefits resulting from the order.[8] Because of the complexity of the required calculations, a programmed electronic calculator was used. The estimated present value of the total benefit is $3,999, 825.

Footnote 7

Because ordinarily any lawsuit and resulting order results in income redistribution--a transfer of money from one person or group to another--it may be appropriate to consider the loss that might accrue to those majority members who do not become firefighters. In this case, this net loss appears to be small or non-existant, since white males in New Haven with a high school education earn on the average the same salaries as firefighters. Thus eliminating discrimination results in a net gain to society, of the very type noted by the Council of Economic Advisors ten years ago.

Footnote 8

Obtaining the present value of annual benefits is the approach most commonly used in this type of problem. Continuous

It must again be stressed that this estimated benefit may very well substantially understate the actual benefit to minority firefighters themselves. In addition, the social benefit resulting from the economic benefit to the New Haven minority firefighters is also not included.

Finally, I have not included any value for the impact of this court's decision on the hiring practices of other employers. The economic benefit of this decision will, of course, be multiplied by the number of employers who adopt hiring policies equal in scope to the court's order. This "ripple effect," like the social benefits of employment for

---

Footnote 8 (cont)

discounting is done using a standard formula; continuous discounting results in a higher effective discount rate than annual or quarterly discounting, and thus tends to minimize the size of the benefit calculated. The present value at a constant stream of income over 25 years, discounted continuously at .06 per annum is given by the formula $\int_0^{25} I_1 e^{-.06} dt$ where I is the income stream originating in the first year. The present value of the income stream originating in the second year, I_2 is given by $\int_1^{25} I_2 e^{-.06t} dt$. These values must be summed over all relevant years. See, e.g. Alpha C. Chiang, Fundamental Methods of Mathematical Economics (N.Y.: McGraw Hill, 1967), pp. 514-517.

minorities, cannot be estimated precisely, but may well exceed the direct economic benefits to minority New Haven firefighters which I have calculated.

Heidi Hartmann
HEIDI HARTMANN

STATE OF CONNECTICUT)
ss. New Haven, August 8, 1975.
COUNTY OF NEW HAVEN)

Subscribed and sworn to before me at New Haven, August 8, 1975.

DAVID N. ROSEN
Commissioner of the Superior Court

CERTIFICATION

This is to certify that a copy of the foregoing memorandum of law and accompanying affidavits of David N. Rosen, Michael Koskoff and Heidi Hartmann were mailed, first class mail, postage prepaid this 23rd day of December, 1975 to the following counsel of record:

W. Paul Flyn, Esq.
132 Temple Street
New Haven, Conn.

Roger Frechette, Esq.
Corporation Counsel

Frank Meadow, Esq.
Corporation Counsel
City of New Haven
161 Church Street
New Haven, Conn. 06510

DAVID N. ROSEN

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

- -x

THE FIREBIRD SOCIETY OF NEW HAVEN, INC., et al.,

Plaintiffs,

vs. : Civil

THE NEW HAVEN BOARD OF FIRE COMMISSIONERS, et al., : 15876

Defendants.

- -x

New Haven, Connecticut
April 5, 1976

B e f o r e:

Hon. ROBERT C. ZAMPANO, U.S.D.J.

A p p e a r a n c e s:

MICHAEL P. KOSKOFF
1241 Main Street
Bridgeport, Connecticut

DAVID N. ROSEN
265 Church Street
New Haven, Connecticut

JOSEPH GARRISON
Asst. Corporation Counsel
161 Church Street
New Haven, Connecticut

W. PAUL FLYNN
132 Temple Street
New Haven, Connecticut

THE COURT: In the matter of Firebird Society of New Haven versus New Haven Board of Fire Commissioners, 15,876 Civil, in the application for attorneys' fees, are the parties ready to proceed?

MR. KOSKOFF: We are, your Honor.

MR. GARRISON: Defendants ready.

MR. FLYNN: If your Honor please, I believe that the file reflects there is a statement from myself concerning time. I understand that today's proceedings are not devoted to that, and that I'm really a third wheel on a two-wheel bicycle, and I would ask the Court, unless there's some dispute about that, that I be permitted to be excused.

THE COURT: Well, what's the defendants' position with respect to the application filed by Mr. Flynn?

MR. GARRISON: Your Honor, I received his -- his schedule, and I really didn't know why he filed it. He didn't file a motion.

MR. FLYNN: Yes, I did, some time ago.

MR. GARRISON: I'm sorry. I took over a file, which I looked over as carefully as possible. I would -- my position, then, with Mr. Flynn, then, would be the same as regards the plaintiff. I don't see any particular reason for him to file anything other than his schedule. I would note I haven't tried to account for duplication or any other factors on his schedule, which I did for Attorneys Rosen and Koskoff.

THE COURT: Well, does the defendant address the question whether Mr. Flynn, representing intervenors, would be entitled to a fee under the statute?

MR. GARRISON: I haven't, obviously, in my brief. As I just stated, this is the first time that I really know he was applying for fees to be assessed against the city.

That may present somewhat of a different question than the general questions with the plaintiffs, and I would ask for perhaps a week to submit a supplemental memorandum on it.

THE COURT: Yes. Motion is granted. And Mr. Flynn will have a week thereafter to file a reply to the defendants' brief.

MR. FLYNN: All right.

MR. ROSEN: May we proceed, your Honor?

THE COURT: Very well. You may.

Has it been agreed upon as to how we will proceed this morning?

MR. ROSEN: Your Honor, it is our intention, the plaintiffs', to present three witnesses: Mr. Goldstein, who is an attorney and an expert in this area; Attorney Jacob Zeldes from -- with whom I'm sure your Honor is familiar -- we are going to ask to testify, and one of the plaintiffs in the case we're also going to ask to testify, and we've had substantial discussions with counsel for the defendants' and I think that at the conclusion of our evidence, we'll be in a position

to tell the Court about areas that are not in dispute.

THE COURT: Very well.

B A R R Y L. G O L D S T E I N, called as a witness, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: Please state your name and address for the record.

THE WITNESS: My name is Barry L. Goldstein, and I reside at 535 West End Avenue, New York, New York.

DIRECT EXAMINATION

BY MR. ROSEN:

Q Mr. Goldstein, what is your occupation?

A I am an attorney.

Q And by whom are you employed?

A I'm employed by the NAACP Legal Defense and Educational Fund, Inc.

Q And for how many years have you first been an attorney?

A I graduated law school in June, 1970, was admitted to practice before the courts of the State of New York, 1971, and was first employed by the Legal Defense Fund in August, 1971.

Q And can you tell me, just very briefly, what is the NAACP Legal Defense and Education Fund?

A It is a nonprofit organization which was first started in 1939, which is organized and structured to represent

black citizens in civil rights cases in all areas.

A number of the areas we've been involved in is education, employment, voting rights, and also in some criminal cases, and, of course, in representation of civil rights demonstrators.

We also -- the educational part of our name is not just there as show. We have a substantial educational part of our program. We conduct community education, informing people of their various rights under the civil -- civil rights statutes and the Constitution of the United States.

We also have training programs for lawyers who are engaged in civil rights representation around the country, and we also have a very expensive, but, I think, important program in providing specific training for a number of young lawyers to establish practice in various areas around the country where there are no civil rights lawyers or attorneys who are willing to take civil rights cases.

Q And in the category of civil rights cases on behalf of -- of black people, you include employment discrimination, is that right?

A Yes.

Q And specifically what is your area of responsibility in the Legal Defense Fund?

A I have almost exclusively worked in employment

discrimination since I -- I started at the Fund almost five years ago, and for the last three years, I've exclusively been working in that area.

Q And there are other people besides yourself in the Legal Defense Fund who work in the area of employment discrimination?

A Yes, I'd say there are about three full-time -- three other full-time employees working in employment discrimination and two other lawyers who work a substantial part of their time.

Q And of those people, what? Are you the most senior of that group of attorneys?

A I would think that I am the most senior, and I guess my role would be first among equals.

Q Can you tell me what your responsibilities are in the area of employment discrimination?

A We have a docket of about 150 active Title VII cases which I'm responsible for. We also consult on a number of other cases. Specifically, I'm involved in the direct litigation of a number of cases at the District Court, Court of Appeals and Supreme Court level, and very general responsibility for making decisions such as whether we support an individual request in a case at the District Court level and perhaps at the appellate level, or the Supreme Court level, and also involved in trying to get representation for black workers who write to us and who

seek counsel in their specific area.

We get letters from all over the country, and a lot of times they have been unable -- they write to us because they've been unable to get representation in their particular locality.

Q So is part of your function at the Legal Defense Educational Fund the assessment of Title VII enforcement throughout the United States?

A Yes. A lot of the areas that I'm involved in: that is, a basic starting point to make any decisions.

Q And you have occasion to make that assessment in terms of cases that -- which cases you will handle and in terms of finding counseling cases which you either will be involved in cooperatively, or will attempt to refer?

A That's true. And also cases that we would decide to appeal or become involved in would depend somewhat on our assessment on what are the important issues in the area of law at any given time.

Q Now, in terms of assessing Title VII enforcement, and when you talk about employment discrimination, is that in -- very substantial largely under Title VII of the Civil Rights Act of 1964?

A Well, as you know, the Act was amended in 1972, so now an employee can -- can sue local, state governments, and the federal government under Title VII, so all our cases now we

try to get under Title VII, especially since after the Alyeska decision, you can't get attorney fees under 1981 or 1983.

Q Now, in terms of United States as a whole, can you -- can you tell me who it is that -- who are the -- in terms of the lawyers, can you assess which lawyers and the -- the -- which lawyers are litigating major Title VII cases? Can you categorize them in any way?

A Well, I think I better confine my remarks to race discrimination cases since it is what I'm familiar with.

We handled a couple of sex discrimination cases, but I don't really handle a lot of those at all.

In [illegible] discrimination cases, the vast majority of cases that have been tried on the merits and have been reported have been tried by attorneys in cooperation with an organization such as ours who can provide some manpower, time and funding. A number of the -- the cases in the Supreme Court have been done by the Legal Defense Fund. There's also a number of cases that have been done in conjunction with other organizations, such as the NAACP. Another group of cases, and a much fewer -- fewer cases in number is cases that were done through, let's say, an organization like the Lawyers' Committee for Civil Rights Under Law who try to encourage members of the private bar to do pro bono work, although there have been very few cases done as pro bono work, and successfully tried on the merits.

Q Now, when you talk about funded organization, what is the financial incentive for a funded organization such as the Legal Defense Fund to become involved in a Title VII case? Specifically, do you depend on a court award of attorneys' fees for your motivation to become involvedin such a case?

A Now. We would be representing clients in civil rights cases, of course, regardless of whether or not there was attorneys' fees award, but award of attorneys' fees which goes back into the litigation program, of course, allows us to do more than we otherwise could do.

Q Now -- and the second category that you spoke of, a private practitioner's working through groups like the Lawyers' Committee is -- are those practitioners, as far as you are able to assess, provided -- do they -- do they do those cases on the basis of financial incentive, or is it for other reasons?

A I think with -- what the NAACP does give some financial assistance to attorneys. The Lawyers' Committee does not, as I believe, and I think they depend very much upon attorneys handling Title VII cases as attorneys will handle legal aid cases.

Q Uh-huh. Now, in addition to those two groups, does the federal government also play a role in Title VII enforcement?

A Yes. In the amendment to the Civil Rights Act in 1972, the Justice Department handled a number of private

employment cases, and now that's being done by the Equal Employment Opportunity Commission.

Q And can you tell me what role does the Justice Department or the Equal Employment Opportunity Commission play as far as enforcement in Title VII nationally is concerned?

A I think the role was very defined by the Second Circuit in the Williamson v. Bethlehem Steel Corporation case, in which the Second Circuit viewed the role of the Justice Department -- or it would be the EOC now -- as one in which they take into consideration public -- the public interest as well as the representation of black workers or -- or females.

The private bar, on the other hand, is -- is interested in -- in insuring the full equal employment opportunity of the people they represent. And as the Second Circuit said, they're complementory roles and it's important to have both the types of litigation in the field.

Q Can the federal government provide full enforcement of Title VII?

A No, I don't think it can. Certainly not as Congress envisioned. Congress saw the importance of aggressive private litigation of employment cases.

Again, the Bethlehem Steel case is an example where the federal government at that point did not ask for back pay for the class of black workers. After the suit had been tried,

litigated and appealed, another suit was filed on behalf of private individuals seeking back pay. The District Court dismissed it. The Second Circuit agreed that this -- the interest in getting full relief was very important not only, of course, to the private individuals who were due money, but as the Supreme Court recognized in Alberlemarle Paper Company last year, that the -- the award of back pay is a spur and catalyst to compliance with the law. And if there's strong enforcement, if the defendants know there's going to be strong enforcement, if they know that there is a real economic club hanging over their heads, then, hopefully, the law will be complied with.

Q In terms of numbers of cases, can the federal government play a significant role?

A Well, I think the -- the Equal Employment Opportunity Commission has had the power to bring suit since March, 1972, and there have been only a handful of cases tried on the merits by the EEOC, which attests partly to the complexity of the litigation in Title VII, the difficulty that a -- that this federal agency has had in starting to litigate cases, but it also indicates the limits that a federal agency has as to how they can effectively enforce an act nationwide, and I think that it is crucial that the Act will have to be enforced in the various communities around the country.

Q How about organizations such as the Legal Defense

Fund, are you able to provide any type of enforcement of Title VII?

A. No. We realize our limitations. We -- we never have looked at ourselves as an enforcement agency. We have a handful of lawyers in New York, and we're helped by having a lot of very good lawyers who we cooperate with around the country, but our main role, and the only role that we effectively can have is to try to handle some of the cases that are going to clarify the law and tomake sure that -- that -- or to try to make sure that the major issues that are coming up in these cases at any particular time are presented to the Court, but we just can't enforce the Act.

Q. Are you able to take all the cases that are -- that -- in which you are requested to represent people in race discrimination cases?

A. I have trouble just responding to all the requests we have on the phone and in written communication to take cases. We take a minority of those -- those cases of people who request our assistance. Either attorneys or black workers.

Q. Do you attempt -- if the Justice Department can't give full enforcement, and you can't give full enforcement, or in an instance, such as yourself, can't give full enforcement, do you attempt to find members of the private bar to provide enforcemetn for Title VII?

A. Absolutely. I view it as one of the main parts of my job.

Q. And can you tell me what are the issues that you confront, or to be more precise, are there -- there barriers that make it difficult to find private attorneys to handle class action Title VII cases?

A. I would say that there are three substantial barriers: time, money, and the apparent complexity of the litigation. A Title VII case typically will require a substantial amount of time, especially if it's a class action, of a lawyer, and it will have to -- at many times during the litigation that the -- at the precomplaint stage, for example, at the discovery stage, pretrial, trial and appellate stage, requires substantial amount of blocks of time.

A lot of lawyers are not in a position to devote that amount of time to a specific case, especially when they aren't getting -- being paid for the hours that they put in on that case on a regular basis, and have to await a possible award many years down the road. Many of these cases take a long time.

Q. When you say a long time, can you give me an estimate of a time that an attorney would expect to spend before the end of a Title VII class action?

A. We figure that we do well when we can get a case to trial of a moderate size class action 18 months after filing

the complaint.

Unfortunately, a lot of our cases go a lot longer. I'm involved in a litigation against U. S. Steel in Birmingham that the complaint was first filed in 1966, and, unfortunately, it's still going on.

Q And then if a case is tried within 18 months, are appeals frequent in -- expected in a Title VII class action case that's brought to trial?

A Well, expected in almost every case up until this point. We're hoping that with the recent decisions of the Supreme Court Alberlemarle Paper Company and Franks v. Bowman Transportation Company that the law will be more clearly set forth and that perhaps the parties will not appeal.

Q Okay. Now, that's the issue of time. Now, in terms of -- tell me something about the problems of money that private attorneys face? First of all, do you sometimes make financial -- sometimes financial arrangements in attempts to induce private attorneys to become involved in Title VII cases?

A I don't think it's necessarily to induce attorneys, it's to provide a means by which attorneys can actually litigate these cases, because they are so expensive.

We will undertake in many cases to pay the costs of a case, and I use costs in a broad sense. It would include deposition costs, use of experts, which are routinely required in

Title VII cases, and we also will in many cases advance cooperating attorneys a fee on the basis of their per day work. The fee is very modest, as our cooperating attorneys always tell me, and what it is is $50 a day for in-office work and $100 a day for out-of-office work, and it's basically geared to try to allow attorneys to pay the light billwhile they're litigating these complex Title VII cases.

Q. Now, despite the -- what -- the -- whatever financial help you can give to attorneys, do you nevertheless have problems finding attorneys who will -- private attorneys who will handle a class action Title VII case?

A. In many parts of the country, we've just been unable to find any attorneys to handle the cases. I've not been very successful in attracting attorneys to handle cases of people who write in requesting support.

I understand that that's a problem that local bar associations have had, as well, and there's a case in the Fifth Circuit in which the Fifth Circuit recognizes that it is a problem that the District Court judges have had. Under the law, a worker can come in and present his EOC charge to the judge and request appointment of counsel. At least in the Fifth Circuit, local judges have had substantial amount of difficulty requesting attorneys to represent clients. I believe that -- where that problem is reported is in a case called Kessell and Company

Goldstein - direct

v. EEOA.

Q And is the problem with -- have you been explicitly faced with attorneys presenting you with the financial difficulties in becoming involved in Title VII cases as a reason for them not to get involved?

A Attorneys have told me on numerous occasions that even if we paid the direct litigation costs of the case, they could continue to run their office and expend the amount of time that they would have to expend over a four or five-year period, or even a two or three-yearperiod, on the possibility of: one, winning the case; two, getting award of attorneys' fees; and three, getting adequate attorneys' fees.

Q Now, can you tell me just a word about -- you said that Title VII cases are complex cases and time-consuming cases. Can you briefly tell us the reasons why that is so in your experience?

A I think there are a number of reasons for it. One is it's a growing body of law. I don't think the law itself is particularly complex, but one has to spend a lot of time keeping up with the developments in the area.

I know in my set of employment practices decisions put out by CCH, we're now on Volume 11. That's 11 volumes of cases since 1965.

Another reason why I would call it complex litigation is that in order to truly represent our clients in a Title VII

case, the attorney needs to know not only the practices of discrimination and the particular story of his client, but he needs to know how the plant or the governmental department operates, in fact.

There are many questions as to appropriate relief, once discrimination is proved. And those are questions that go more towards business and practical considerations than to proving racial discrimination.

If one handles a steel case, one needs to know to some extent what workers do in a steel plant, specific jobs, what's the relationship of the jobs.

That is also true in a local government case. There are technical aspects to understanding the employment situation in any plant or governmental department. To name two, tests are used, and I believe tests were used to some extent in your case, that requires the attorney becoming familiar with a fairly esoteric body of knowledge, which is the knowledge that industrial psychologists have, and also, to some extent, statistical information concerning validation and statistical significance.

Also, it is important that the attorney, in understand- the relationship of the jobs, understands the relationship of the jobs in a technical sense, and, again, one needs to know a lot of the knowledge that an industrial engineer has.

Some of the other areas of complexity in Title VII

cases are the mass amounts of information that's generally included in Title VII cases, learning about the personnel practices and how a plant operates. Also, one is dealing with a -- generally, with a very active class of black workers who are --

Q Can you --

A Excuse me. Go ahead.

Q Can you tell me -- when you say an active class, in what sense is a class of workers in employment discrimination cases more active than a class in a stockholders derivative suit?

A I think in an employment case, the case, for fairly clear reasons, is one of tremendous importance to the black workers. It is going to determine their job opportunities for the rest of their working career in a large amount of cases. It is going to determine how much money they'll be able to make in the working career, and also people feel very strongly about civil rights like they feel about religion. And people are very interested in their case for these practical and idealistic reasons.

Also, typically in a Title VII case, you are talking about a group of people, no matter how intelligent, who are not familiar with the workings of lawyers and the workings of the judicial system, and to a large extent, the lawyer for the

class of plaintiffs needs to be a real communicator between the hopes and aspirations of the class members to get full civil rights and to explain the practicalities of our system. The time that it takes, questions of law -- I know I always have a very difficult time explaining statute of limitations, and why people can't get full monetary relief from a sense of justice to the average layperson, it doesn't make a lot of sense.

Q So that this type of litigation, it peculiarly requires close and continuing contact with the client?

A Absolutely.

Q And with the class in a class action?

A And when -- even in New York, weget a lot of phone calls from people in Alabaham that we represent wanting to know what's happening in their case and having some very important questions, and your opportunity as an attorney in a class under Rule 23 to represent those class members as if you have an individual retainer.

Q And in terms of attracting private attorneys in light of the complexity involved and the time involved, it's been your experience that, on the whole, private attorneys simply have not felt the confidence that they will be sufficiently remunerated at the endof the case for them to -- for there to be -- for the cases to be attractive to them, as you present them?

A Yes. And certainly we have had to depend largely upon attorneysin the field who, for a decade or more, represented people in civil rights cases, but with the need for more attorneys handling employment discrimination cases, we haven't really been able to add to that group.

Q So it's been essentially charitable motivations that have -- that's called forth private enforcement of Title VII?

A I don't know if charitable may be one way of looking at it. It's just people who look at themselves and identify themselves as lawyers, as people who are going to represent people who are seeking their civil rights.

Q Now, have you examined the papers that were filed in this case?

A I have examined some of the papers. I was given copies by Mr. Koskoff of some of the pleadings that you filed and also decision and order of the Court.

Q And did you evaluate the -- were you also given the time schedules that we filed?

A Yes.

Q Did you evaluate the time spent on the various tasks that were performed in this case with a view to assessing the reasonableness of the time spent in the light of your experience in the Title VII area?

A Yes, on some of the matters that I -- that I had

before me, of course.

Q And specifically in terms of time spent preparing the -- prior to and involved in preparing the complaint and supporting documents filed with the complaint and seeking temporary restraining order in October of 1973, did you, first of all, make your own computation of the time spent prior toand including that job?

A My math might be a little off, but I have -- I calculated 126 hours through the filing of the complaint, which includes, of course, theEOC charge and the motions for injunction.

Q And do you have an opinion as to whether that is -- that's -- as to the reasonableness of that amount of time spent on performing those tasks?

A I was impressed by the fact that as much work was done in that amount of time. And, obviously, it was -- it was good and accurate work, because in looking at later papers a lot of the facts later agreed to by the parties and found by the Court were originally stated in the complaint, and the complaint was done in a very detailed way, and I think a complaint that is as detailed as the one which you filed would get most, if not all, issues out before the Court and opposing counsel right away, and most of the underlying facts, and I think allowed -- it was partially responsible for this case moving as amazingly expeditiously as it did move through August of 1974,

I believe.

Q And I will ask you that -- another specific item, you reviewed specifically the brief that was filed in opposition to intervention in the District Court?

A Yes. In the District Court. I didn't see the appellate brief.

Q And in terms of the time spent on that brief, do you have an opinion as towhether that amount of time was reasonable?

A I calculated something between 35 to 40 hours. I wasn't quite sure as to some of the indications whether it was spent on the brief in the District Court level, and I think that that's a very reasonable amount of time. Some lawyers could do it maybe a couple hours less, but the vast majority of lawyers would take substantially longer, at least who I've come into contact with in Title VII cases.

Q And referring to the chambers conferences, have you been involved in negotiation in Title VII cases yourself?

A Yes, I'd say at least a dozen.

Q And do you have an opinion as to whether or not it is reasonable to have two attorneys present during substantive negotiations in a Title VII class action?

A Well, I think as a general rule in Title VII litigation, that it is important for two lawyers to be fully familiar with the facts and the litigation process. That -- and

interchangeable. Now, you can -- a lot of times it is necessary to have additional lawyers who would handle specific issues, but these cases are complicated, and it would be unwise in most instances to have an individual attorney try to try a Title VII case, and I think negotiations are, in many ways, more difficult than trial.

Q And in terms of the total amount spent -- time spent on the case, do you have an evaluation without doing an hour byhour breakdown of each hour, but do you have an evaluation as to whether the total time spent is comparatively large or comparatively small for a Title VII class action settled without a trial?

A Again, I was impressed by the amountof hours used to handle the preparation, settlement, and then the appeal of the Title VII case. I believe it was 650 hours.

Q Were you impressed by its large or its small size?

A Its small size. You know, I think in a lot of cases, just -- just for pretrial settlement, we've requested and received attorneys' fees for substantially more hours, not including an appeal.

Q And in terms of the results obtained, do you have an opinion as to the quality of the work done and results attained compared to other Title VII cases that you encountered?

A The thing that stands out in this case is the time

it took from the -- from the filing of the EOOC or -- filing of the complaint until there was relief ordered by the Court. Both preliminary relief in December and final relief in August. I don'tknow of any case that got effective relief to a class of workers as quickly as this case did. And speed is very important. Whether -- it determines how quickly a worker is going to move up in a job. It's a matter of dollars and cents.

If a person is in a job two years before he otherwise would be in if the case proceeded at a more leisurely pace, that's going to be worth thousands of dollars to him. I don't know what the specific facts in thise case are.

As far as the relief in substance, it is equal to the relief in other cases similar, and perhaps more substantial in the promotion area. There was excellent procedures for hire, recruitment and the length of training period for blacks, higher -- in order to move up to higher jobs.

But in many cases it's been very difficult to settle for or win in litigation specific promotion relief for people who are in grade. Movement up to, in this case, lieutenant position, I believeone person moving up to the captain position.

THE COURT: Thank you. Cross-examination.

CROSS-EXAMINATION

BY MR. GARRISON:

Q Mr. Goldstein, when you said that the NAACP Legal

Defense Fund has difficulty finding lawyers in sections of the country, did that include Connecticut?

A. I'm not personally familiar with any time we've attempted to get a lawyer in Connecticut. I haven't. For a Title VII case.

Q. It's true, isn't it, that private attorneys who have taken Title VII cases have been awarded substantial fees?

A. Substantial in the sense of the amount of money they received, I would say yes. As far as an hourly rate, depends on who you talk to.

THE COURT: Tell me what some of the judges have been doing across the country?

THE WITNESS: Yes, sir. Most of my experience has been in settling attorneys' fees where we've made an agreement with the defendants, it hasn't been based on an hourly rate.

I brought with me -- or -- the latest case in which an employer -- an employee of the Legal Defense Fund was awarded a specific hourly rate in litigation before a District Court, that's a case in the Middle District of Georgia, and he received $75 an hour. The local attorney received $35 an hour.

I might add that that was also, like this case, a pretrial settlement on the substance, but not on the attorneys' fees. It's remarkably similar like that. And in that case we had billed and received payment for approximately 660 hours of lawyer time, and that, of course, did not include an appeal

Goldstein - cross

like in this case, or a problem with intervention.

I have a copy of the opinion for the Court.

THE COURT: Yes. Thank you very much.

Q Is that a private employer or a public employer is the defendant?

A It was a public -- excuse me -- it was a private employer. I have a copy, if you would like one, in my briefcase.

Q Thank you.

You have characterized in your testimony of the area of Title VII as a rapidly expanding area of legal services, is that fair?

A The body of law is rapidly developing in that area, yes, since the Act was passed in 1964, and became effective in '65.

Q Would the City of -- could you give an opinion on whether the City of New Haven could be classified as a government contract? Just from your knowledge.

A In whose classification?

Q In the classification relating to Affirmative Action Programs.

A I believe that what you are referring to is the Labor Department s obligation to enforce the executive order, 11/4/72, Ibelieve, to insure compliance with equal employment opportunity in the office of -- for contract compliance.

Q Right.

A I really -- that's an interesting question. I really don't know if New Haven could possibly be a contractor. I would certainly under -- under -- certain types of grants that it would receive from the federal government, it would have to meet certain standards for equal employment opportunity. I don't know if it would be under the executive order or not.

Q It would from time to time, anyway, have to meet Affirmative Action obligations with regard to certain contracts, certain federal moneys that it might receive, is that true?

A The only thing that I can think of specifically, and that I have any knowledge of is grants under LEAA, Law Enforcement Administrative Agency. Is that what it's called? In order to receive some money under that program, one has to meet certain standards, and I am familiar with that, because there's now a suit against the LEAA because they haven't been enforcing the standards.

Q Do you -- standards that require, for example, the city, to meet equal employment standards -- require compliance reports, for example?

A I just don't know. It would be a guess.

Q Do you know that if the city does not comply with those standards, would there be a penalty involved? In generally, or specifically, any knowledge that you may have.

Goldstein - cross

A Well, I know with respect to private employer, which is the only thing that I'm speaking about, the ultimate penalty that the Labor Department has is to debar a company, cut off its contract.

Q Is it fair to say that since the 1972 amendment, anyway, that there has been rapid movement on the part of both public and private employers to begin to comply with Affirmative Action standards as compared to pre-1972?

A I would think there's probably -- there's probably been a change, and it's too early to tell, not in 1972, but with the Supreme Court's decision in Alberlemarle Paper Company v. Moody, where it became clear that both companies who violated the law would have to pay back pay. But that's only -- that's less than a year.

Q As a result of that decision, it would be your opinion that it would be in the interests of employers to begin to comply voluntarily?

A Yes. Sure.

Q Now, I only have one other question on this. Suppose that this type of equal opportunity case had been prosecuted on behalf of an individual client and the hours that were necessary to win the case were similar, in your estimation, should the same kind of fee be awarded? If a fee were to be awarded at all?

A If I can say yes and no to that, and explain it, I

think in Johnson v. Georgia Highway Express, a case decided by the Fifth Circuit, which I'm sure you are familiar with, there was a list of about nine or ten factors that should be considered in determining what is a reasonable and appropriate attorneys' fee award. I think that very clearly states appropriate standards.

Now, in one of -- one of those standards was hours put in, and another standard was benefit to the class or the community.

Now, if you have a class getting more relief than in an individual case, then if that factor is applied as it should be, in my opinion, there would be more attorneys' fees awarded in a class case.

Now, of course, in an individual case, one may have an individual case in which there's injunctive relief established which would give a lot of benefit to an individual and the community in general, and may be equal to a class case. Now, that, in a sense, is the way that I'd want to approach it.

Q Let me ask you one other area. Are you acquainted or -- with attorneys who have served or perhaps have members of your organization served under the Federal Public Defender Statute by appointment in criminal cases? I had thoughtthat Legal Defense Fund did.

A. I'm not aware of any situation where we've served under that statute by appointment. I think there have been a

couple prison cases which -- it's not the same thing -- where judges have asked us to participate in the case, either as amicus or as cocounsel with the local attorneys, but I don't think it was under that statute.

Q Okay. I won't go further.

MR. GARRISON: Thank you.

MR. ROSEN: I have just a couple.

REDIRECT EXAMINATION

BY MR. ROSEN:

Q You referred to the impact of the Supreme Court's decision, Alberlemarle Paper Company against Moody, and also were asked about your efforts to find counsel in Connecticut.

After -- is it your opinion that employment discrimination has substantially abated since Alberlemarle Paper Company?

A No, I have no facts that I could make that statement on except reason -- expectations of people to act in a reasonable way in their economic interests.

Q Have you -- is there still, since Alberlemarle Paper Company against Moody -- has the number of Title VII cases continued to dwarf the capacity of your organization and the private bar as it's presently been functioning to handle all the employment discrimination cases?

A Yes. And I might just, if I may, add a supplementary answer to the question on Connecticut, while we have not sought

attorneys in Connecticut, attorneys in Connecticut have sought us, and in two specifics cases, the Bridgeport Guardian's case, we participated in some of the appellate work, I believe just in the Supreme Court, and in the case of Fitzpatrick v. Bitzer, I believe it's called, the question of the application of the Eleventh Amendment to Title VII -- that became a very complex and difficult issue, and we provided substantial assistance, and I believe were, of counsel in that case coming out of Hartford concerning that very important issue.

Q Now, based on your national work in the area of employment discrimination, is there some area of the country, Connecticut or anywhere else, where employment discrimination is substantially -- is not a substantial and wide-spread problem?

A I haven't had any specific experience with Connecticut except reading the opinions rendered by the courts, but I have litigated cases in the North and the South, and, somewhat surprising to me, the discrimination in the North in employment is practically as severe as in the South, although there wasn't the segregation by law problem that you had in the South where every job was segregated in a lot of plants.

Q So employment discrimination is a national problem, not a regional problem, anyway, race discrimination in employment?

A I would say that. In addition, we've had much more

difficulty getting attorneys to represent clients in the North than in the South. In the South, we've had the traditional black civil rights attorneys who've always handled civil rights cases there, whereas in the North, you've never had a civil rights bar to rely on in getting Title VII attorneys.

Q Now, is -- in another area, the Title VII was amended in 1972 to cover municipal corporations and other public agencies. Can you just tell us if there's any indication in the legislative history or on the face of the statute that the treatment of thatclass of defendants was intended by Congress to be any different with respect to attorneys' fee awards?

A To the best of my knowledge, no.

Q And --

A The same provision applies, 706(k), I believe it is.

Q And reference to the decision that you gave to his Honor a couple of minutes ago, this Attorney Sherwood is a colleague of yours at the Legal Defense Fund?

A Yes, sir.

Q How many years experience has he had as an attorney?

A He clerked with a judge for two years, and has been with us for two years. I believe it's been four years since he passed the bar.

MR. ROSEN: Thank you. I have no further questions.

MR. GARRISON: No further questions.

THE COURT: You are excused.

(Witness excused.)

JACOB D. ZELDES, called as a witness, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: Please state your name and address for the record.

THE WITNESS: Jacob D. Zeldes. 133 Ridgeview Avenue, Fairfield, Connecticut.

DIRECT EXAMINATION

BY MR. KOSKOFF:

Q Mr. Zeldes, can you tell us your educational background?

A Yes. Graduated from the University of Wisconsin and from the Yale Law School.

Q And when did you graduate from Yale Law School?

A 1957.

Q Following your graduation from Yale Law School, have you clerked for a Judge of this Court?

A Yes.

Q And who was that?

A Judge Anderson.

Q And following that, can you tell us what you did -- what your professional career has been?

A I've been -- since that time, I've been in general practice in Bridgeport, first as a member of the firm of Goldstein and Peck, and then since 1971, as a member of the firm of Zeldes, Needle and Cooper.

Zeldes - direct

Q Now, have you had occasion to be appointed by this Court on many occasions with regard to serving the Court in various functions?

A On several occasions, at least.

Q And what type of occasions has that occurred?

A Over theyears, it's included appointments as representation of indigent accused, both under the new Criminal Justice Act and before the Criminal Justice Act; also as a special master on occasion,and also in connection with the reorganization of the New Haven Railroad.

Q In connection with that, have you served as a trustee? Or -- in what capacity have you served in that?

A Well, I am -- I was assigned by the Court to, as trustee -- successor trustee to the Chase Manhattan Bank in connection with one of the group of bondholders after the Chase Manhattan Bank was disqualified.

Q Now, have you had a business relationship at all with either my firm of Mr. Rosen's firm?

A I haven't had any business relationship with Mr. Rosen's firm. I have had a business relationship with your firm on occasion. Our firm now represents your daughter in a personal injury action, and I previously personally represented Mr. Bieder, who is a partner in your firm, in connection with a matter several years ago.

Q Now, can you tell us, in the course of your practice, have you come to know the reputations of both myself and Mr. Rosen?

A I have.

Q And can you tell us what your assessment has been of that?

A I think you have excellent reputations in the community -- in the legal community.

Q Now, the -- can you tell the Court something about the nature of your own practice insofar as it concerns court litigation?

A Well, it's -- we're engaged in the general practice of law with emphasis on litigation.

Q And the side -- how large a firm is yours and what size is it?

A There are ten lawyers at this time.

Q And the type of litigation which you engage in is what? What categories of litigation does your firm engage in?

A We're engaged in both civil and criminal litigation in the federal courts and in the state courts.

Q And you have been engaged, have you not, for many years in federal court, various types of federal court litigation?

A Yes.

Q Would that include both civil and criminal?

A. Yes.

Q. Now, prior to this time, have you ever, in the course of your practice, handled a Title VII case?

A. I have not personally handled a Title VII case. I think that one of my partners, Mr. Shrader, may have been connected with the defense of a case. I'm not certain. And I was consulted once, but never became involved on a case that was centered in the District Court in Indianapolis, I believe.

Q. With the case that Mr. Shrader may have been involved in, that was on the defense end of a Title VII case?

A. Yes. I'm not certain it was Title VII. It was some type of employment discrimination, I believe.

Q. Prior to being consulted with regard totestifying in this case, were you -- did you have an opinion or an idea as to whether or not employment discrimination cases were economically lucrative kind of cases to handle?

A. I had very little information on it at all. Just in a general way. In connection with the suit that I was consulted on which I think was pending in Indianapolis.

Q. Did you have an impression with regard to whether they were lucrative forms of case or economically remunerative forms of cases?

A. No, I had no firm belief at all on the nature of that. I know that we just did not have any, and we didn't look

into it thoroughly in that regard.

Q Now, I'd like you to assume, Mr. Zeldes, that you were consulted by clients with regard to rep -- their representation in a federal class action lawsuit involving employment discrimination. And when I say "you", I'm referring to you or your firm. And that you were told in advance that the case would have to be taken on a contingent fee basis, because the clients were not economically situated so that they would be able to pay you as you went along, that the federal statute involved permitted the Court to award fees to the prevailing party.

Assume that you did not know in advance whether or not the case would settle, whether it would be complex, trial and appeals, whether you would win or not, and if you did win, what fees the Court specifically would award.

Assume, however, that you would not expect to recover fees for at least two to three years, at a minimum, and that in similar cases, where the plaintiff had prevailed, fees were awarded by the Court based upon a schedule of $75 an hour for all work expended by attorneys in your firm.

Can you tell us, based upon the economics of a law firm such as yours, whether that would be --whether you would be encouraged to take a case based upon those assumptions?

A Yes, I can. I think on -- assuming all those factors, we would not be encouraged to take it because of the risk

and contingancies that you are involved on, what would be normally hourly rate for partners.

Q Now, would it make it even less appealing if you were to know that each one of your hours would be subject to cross examination by an opponent, that you would be paid, perhaps, at the $75 rate only for your time in court and not for preparation time or for travel time and for any of those other factors?

A I think that the -- being subject to cross-examination in court wouldn't make it less attractive, the -- being discounted for getting to court would make it less attractive -- and what was the third factor you asked me?

Q And, perhaps, preparation, the fact that you might be paid less for preparation of various papers or other types of work.

A I would think that would make it less attractive.

Q Now, can you tell us in a case such as that what type of fee arrangement would induce you to accept such a case, you or your firm, based on the economics of a law practice such as yours?

A I whould think we'd have to have an arrangement whereby we would get a substasntially higher than normal hourly rate or some type of contengencies or some combination of both.

Q In the course of your practice, do you represent -- are you involved in personal injury cases and the like where

contingency arrangements are made?

A. Yes. I don't personally handle too many of them, but our office does.

MR. KOSKOFF: I have no further questions. Thank you.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. GARRISON:

Q. I can have Attorney Koskoff's hypothetical question repeated to you, if you wish, because my question's based on his, but if you remember it --

A. I think I do.

Q. My only question is: do you know of good attorneys, as -- who you would class as good attorneys, solid, reputable attorneys, in the Bridgeport or New Haven or Connecticut area, in fact, who would take cases based on the facts as asserted in Mr. Koskoff's hypothetical?

A. There might be some. I'm just not sure. You are assuming that it would be the normal hourly rate with -- is that what your question is?

Q. Uh-huh.

A. I don't know too much about the operation of the other firms, but I would be doubtful if they would take it on -- on a straight hourly rate with the risks involved. It very well may depend on what other cases were pending at the time or

Zeldes - cross

whatever activities were facing the office.

Q. Now, your firm or you yourself have, I believe, from your own reputation as -- often served as federal public defender under statutory appointment, that's Title XVIII, Section 3006(a)?

A. I'm serving now as assigned counsel under the federal Criminal Justice Act.

Q. And I assume that you have in your practice had many of those cases tried?

A. No, not many, but I've been -- I was assigned prior to the Criminal Justice Act on occasion, and I think I have one pending now.

Q. Have any of those cases gone on appeal?

A. Including both before and after the Criminal Justice Act? Yes.

Q. Yes. Now, why did you agree to serve in those cases?

A. In those cases, I was assigned by the Court, and I considered it an obligation as one of the members of the bar to take the assignment. In the early days, there was no compensation whatsoever.

Q. And when you took the assignment, you knew of the federal public defender payschedule?

A. Well, before --

Q. Before -- I'm sorry. Only after the Act is what I'm

referring to now.

A. Yes, I consider it in the same vein, though. In other words, that we took it on assignment by the Court without respect to the schedule, and the one I'm -- pending now, I'm not certain I even know what the schedule is, but we've taken it as an assignment by the Court.

Q. Have you have similar appointments in the state court?

A. I only believe of -- that I can recall -- of one in the state court. The current state court situation you have to affirmatively sign up, I believe, and I have not done that. I did have one assignment by a judge in the state court that I recall at this time.

Q. When you take the cases on assignment in the federal court, do you see that as an obligation to the court or an obligation to the public or an obligation to that particular client?

A. Once the assignment was accepted, it was an obligation to the client, but in agreeing to take it without compensation, it was essentially an obligation to the court as a member of the bar.

Q. Do you think that all attorneys in the bar have an obligation to the court, to the public, to take some cases that could be classed as being in the public interest?

A. I think that any member of the bar when he's requested

Zeldes - cross

by the court to accept an assignment is under an obligation to take it. I'm not so certain that it extends to the same degree as to members of the public, otherwise, you very well might be-- spent full-time serving the public without compensation.

Q Do you think that there's any affirmative obligation that the bar has as an organization or as made up of individual members to eradicate areas of discrimination in society through enforcement of employment discrimination laws?

A Well, I think it's the kind of case that -- that perhaps should have some interest for the members of the bar. I'm not so sure that there should be an obligation to take it without the expectation of compensation, because I think that would be a -- the expectation of compensation from a practical point of view is probably a major complementing force in carrying out the policies of the Act.

Q Would it make any difference if you expected to be compensated by the defendant or by your own client at the end of litigation as to your determination of whether or not to take the case?

If your compensation were equal, would it make any difference who the person was that paid?

A You mean assuming that the employees had sufficient funds to pay you?

Q Yes.

A And you were assured of a regular rate without winning or losing the case, is that what you mean?

Q Now, let me --

A I'm just sorry, I didn't mean -- I didn't quite understand the situation.

Q Let me give you a different situation. Assume at the end of the case that your case had been settled and that you were moving for attorneys' fees, and that there were two possible sources from which attorneys' fees could be paid: one would be your client group, the other would be the defendant. Would there be any difference in terms of the incentive to have taken that case in the beginning if you can foresee that payment might be made at the end by either of those two possible groups?

A No, I don't think there would be any difference. Assuming that both parties were equally able to meet a reasonable fee obligation.

MR. GARRISON: I don't have any other questions. Thank you very much.

MR. KOSKOFF: No further questions.

THE COURT: You are excused, Mr. Zeldes.

THE WITNESS: Thank you, your Honor.

(Witness excused.)

MR. KOSKOFF: Can we have a five-minute recess?

THE COURT: I want to finish by 12:30.

MR. KOSKOFF: Yes, we'll be able to do that.

(Recess taken.)

MR. ROSEN: Your Honor, we have one more live witness who is going to testify briefly, and before we do that, I think we're in agreement, plaintiff and the defendants' counsel, with respect to some items that are going to obviate the need for testimony.

As I understand it, defendants' counsel agreed with respect to the affidavits that Mr. Koskoff and I filed in terms of our hours that they're not challenging that we did spend the time that we say that we spent, and they have mounted some objection on the grounds of duplication, but I think we all agree that that is something that can be argued to the extent that it is argued without the necessity for live testimony.

THE COURT: Anything else?

MR. ROSEN: Yes. We filed an affidavit from an economist, Professor Heidi Hartman. It is my understanding, again subject to agreement of defense counsel, the defendants do not challenge the accuracy of that affidavit, although they have serious challenge to its relevancy to your Honor's determination.

MR. GARRISON: That's all substantially correct, your Honor. I would just note that our schedule, as we broke it down, from the affidavit of plaintiffs' counsel, was contained on pages 16 and 17 in my brief. And I think that those all --

none of this breakdown, though, challenges the hours that were put in, it simply breaks it down to its components.

MR. KOSKOFF: One more live witness, your Honor.

THE COURT: All right.

EARL DANIEL GEYER, SR., called as a witness, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: State your name and address, please.

THE WITNESS: Earl Daniel Geyer, Senior. 1152 Wintergreen AVenue, Hamden.

DIRECT EXAMINATION

BY MR. KOSKOFF:

Q. Mr. Geyer, can you tell me what your occupation is?

A. I'm employed as a firefighter, City of New Haven, for the past three months. I've been promoted to the rank of lieutenant.

Q. And are you a member of the Firebirds organization?

A. Yes, I am.

Q. Can you tell his Honor what the Firebirds is? What is its --

A. Well, originally, the Firebirds were organized as a group of black firefighters to be as a liaison between the City and the black community, to help each other -- and promotion and to study and work together. Also, for social functions, along those lines.

Q. Now, Mr. Geyer, can you tell me in the course of your work in the Firebirds association, you became the plaintiffs in this lawsuit, is that correct?

A. That's correct.

Geyer - direct

Q And your organization retained initially me, and then me and Mr. Rosen to represent you in that lawsuit?

A True.

Q Can you tell me whether or not with regard to the -- answering the needs of your organization and your membership, your membership has been satisfied with our representation?

A I would say, and I think, speaking for the organization, that we're very glad that you have represented us, and we are proud of what you have done for us and for the group.

Not being lawyers or knowing that much about law, we had no idea of what this particular suit would -- would entail. We realize that through the meetings that you had to attend which we attended with you, some of them, the hearings, the court proceedings, the tremdnous amount of paper work that was involved, leg work, research. At times, we thought as though you would never be able to accomplish it.

The personal contact that you had with the members of the group, the Firebird president, George Sweeney, and myself, and the officers and men, we felt as though that you have done a wonderful job, and we are very appreciative of it.

Q Thank you.

Now, have you since the termination of this lawsuit and Judge Zampano's order has been issued -- have you had experience with regard to the general effect which this has had

Geyer - direct

upon the black community insofar as the -- this order has been concerned?

A. First of all, I'd like to say this: I'd like to say in that regard that the hiring of 12 black new firefighters on the job has made a tremendous impact on the black community, in a lot of ways, but I think one very important way is now that there are 30 minorities on the department, I think some of the younger kids, children in the neighborhoods, can relate better to the Department of Fire Service. Whereas we were kind of spread out years ago, there was only seven or eight of us, now with 30, we've been able to relate a little more to the community, we've been able to relate to some of the children and some of the problems that the fire department has -- has had in the past, I think we're heading toward helping to assist it.

Secondly, economically, for those that have been hired since the issuance of the Judge's order, I can quote, because I know all the guys personally because I helped recruit 'em, I could say that one person in particular was on welfare rolls, and he had six children, and just to have a job is -- for him, was a great thing.

We've had another one of the -- gentleman that's just came on -- been able to put himself in a position to attempt to purchase a house. We've had two others just recently received department awards or citations. We've had one that received the

department's second highest award, and these are things that we felt as though were very important for us and for the community.

Q. You said, I believe, that you know each and every one of these men who have joined the department?

A. That's right. I know each one of them personally.

Q. And did you know if any of them prior to this time have had difficulties with regard toemployment?

A. Yes. I would say out of the 12, I would say maybe 10 of 'em had quite a problem, they had no jobs at all, and when the opportunity arose for them to become firefighters, this was very good for them.

Q. Can you say, sir, that without question, these men have served the department well since they've been appointed?

A. Yes, I can say that.

Q. Have there been racial conflicts?

A. There have been none whatsoever.

Q. And you yourself have become a lieutenant in the department?

A. Yes, I was appointed lieutenant in December, I've been working -- stationed in Howard AVenue, which is one of the busier companies in the City, but upon certain conditions, I travel around the different -- the other firehouses to replace officers who are absent, and I find that I've had no problem.

Cooperation is very good. I feel as though that I am qualified for the job and everything has been going very good.

Q As a lieutenant, have youhad any trouble with regard to supervising any of the other men? Have you met any resistance?

A None whatsoever. By being sort of a veteran, I've been on for 15 years, you kind of learn some of the things that are unspoken as -- is like giving unnecessary orders and those type a things, and I approach each item and each thing as a daily task, and I haven't had any problem as far as fellows obeying orders and those type of things. I think they've come to learn to respect the Firebirds.

Q And how many lieutenants have been appointed to date?

A Well, there were seven on the list, and two of us have been appointed, and are working today. It's Donald Wilson and myself. The other five are waiting for openings.

Q Now, insofar as the cost of all this has been concerned, have you been keeping tabs on what the cost -- this has been to the City in dollars and cents?

A Yes, I have. I was appointed the recruitment officer under the Judge's order -- well, not his order to report -- name me as recruiting, but the chief of the department named me as a recruitment officer, and we did set up a program, and I have a list of what we did. At the end of my report I have the total cost to the City, which was $5,195.59.

Q Were there any guidelines that you had on what cost would be appropriate.--

A Yes.

Q -- for the City to spend?

A Yes. From some of the reports that I've seen and some of the things that I have gone through from the information that I gathered for a city this size, the size of New Haven, upwards to sixty-five to seventy thousand dollars has been spent on recruitment programs.

Q And you have been able to save some $60,000 for the City through your efforts?

A Yes. Yes, we did. A lot of the -- all of the guys that are members of the Firebirds did donate part of the time. In other words, they donated their own time partly, and the City paid 'em partly, during the recruitment period.

Q Thank you.

MR. KOSKOFF: I haveno further questions, but Mr. Garrison may.

CROSS-EXAMINATION

BY MR. GARRISON:

Q I certainly don't want to question you about the services of your lawyers and your impression. I can see why you got that impression.

All of the firemen who have been hired, and you, the

other parson who's been promoted, and the other who are waiting in line for promotions, are making, or will make, extra money as a result of the order from the Court, is that correct?

A. I don't know what you mean by extra money.

Q. You make more money now, don't you, than you did in your prior position?

A. Right. As an officer, I got an increase in pay.

Q. And those who were hired as new people all make more money than they were making prior to their hiring by the Fire Services?

A. I don't know. I couldn't say, because I know -- I knew two of 'em were working, so, I wouldn't -- I don't know what they were making previous to that, but I would assume if the others weren't working at all, any pay's more than what they were making, yes.

Q. I would think so, too.

If the Court put an order in here at this point that the Firebird Society would have to pay Attorneys Rosen and Koskoff out of the difference in terms of money that they now make from what they were making before, would the society refuse to do that?

MR. KOSKOFF: That certainly is asking for a legal conclusion; they'd do whatever the Court ordered them to do, I'm sure.

Geyer - cross

THE COURT: Well, has your organization paid the attorneys any money?

THE WITNESS: No, sir.

THE COURT: Do you intend to pay them any money?

THE WITNESS: We don't have any money to pay.

THE COURT: Why don't you pick it up it up there, rather than what the Court orders?

Q I understand that when you went into this suit that you had an agreement with your attorneys that you would not be paying them as the suit progressed?

A Right.

Q What I'm asking you is at this time if they were not to be paid from any other source, would the Firebird Society now, in view of the benefits which they have been granted from their attorneys' good conduct in this court, would you now pay them?

A Well, I think that would have to be determined by the members of the Firebird Society. I couldn't make that statement.

Q Would you, as an individual member, vote and speak on behalf of paying them?

A I think if -- if the fee was reasonable, that what I considered reasonable, in my small way, I would do what I could to repay them, but like as I stated before, I don't think what they have done, we could pay them. No monetary value would be enough.

Q I understand what you are saying there. But what you also have said is that if you believe that you could pay them, you would have no objection to paying them at this time?

A Yes, they would be an objection, depend upon the price of what they wanted.

Q However, if their price were reasonable, then there would be no objection to paying them?

A Pe-sonally, I can only speak for myself, I would say no,there would be no --

Q And if the Court ordered you as a member of the Firebird Society to contribute a part of your pay to payment for your attorneys, I assume you would do that willingly?

A I would do it, but not willingly, if the Court ordered.

MR. GARRISON: I have no other questions.

THE COURT: What arrangements did you have with the lawyers when you went to see them? I mean, obviously, aside from themerits and aside from your grievances, sooner or later you had to get around to talking about money. What's your recollection?

THE WITNESS: Okay, your Honor, my recollection is that at the time that we approached them, there were only seven of us, and we had just formed an organization and we had no financial backing, what we had was just more or less pin money for doing some of the things that we thought was important.

We were at that time engaged in community work. We were helping some of the older -- elderly buying TV's and those type of things, and we outright told them that we could not afford to pay their fees no matter how small they were, and we felt as though if anything was to be gained by it financially later on, that that would be up to them to decide. If they thought that the case warrant, that they would make enough to cover their expenses, then okay. If not, then we would try to use other means or go through other lawyers that, you know, would agree with our terms.

THE COURT: All right. Thank you very much Mr. Geyer.

(Witness excused.)

THE COURT: What was the term you used earlier, Mr. Koskoff, or Mr. Rosen, contingency fee?

MR. KOSKOFF: Yes.

THE COURT: Explain that to me.

MR. KOSKOFF: We felt that the term "contingency" has two meanings, that it is, first -- that in a Title VII case the award of fees by the Court is contingent: upon the plaintiff prevailing, for one thing -- for one aspect of the contingency. The second aspect -- maybe there are three aspects of the con' -- another aspectof the contingency is that the -- that we would not ask the plaintiffs -- because we knew that they could not afford fees -- that we would not ask them for fees, that we

would only be aaid were the Court to award fees to us from the defendants.

THE COURT: All right. Very well. All right.

MR. KOSKOFF: And there is a third, I think, correlated aspect to the contingent fee, as we understand it, which is the way it is used with regard to personal injury cases, where it would come from a -- it would be a large -- an amount which because of the speculative nature of it would be substantially larger than it might be were you paid along on an hourly basis.

THE COURT: I'll hear you out, but would you address yourself --

MR. GARRISON: Your Honor, I have one witness.

THE COURT: I do?

MR. GARRISON: Short witness.

THE COURT: I'm sorry. Put him on. I thought you had agreed that three witnesses would be called.

WALTER TURNING, JR., called as a witness, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: Please state your name and address for the record.

THE WITNESS: Walter Turning, Junior. 17 Marjorie Drive in North Branford, Connecticut.

DIRECT EXAMINATION

BY MR. GARRISON:

Q. Mr. Turning, what is your occupation?

A. I'm the Deputy Controller for Data Processing for the City of New Haven.

Q. How long have you held that position?

A. Since 1965, I've been Deputy Controller. Since 1955, I've been employed in the computer area for the City of New Haven.

Q. Now, I direct your attention to this case, the Firebird Society versus the City of New Haven. Are you familiar with the order that Judge Zampano entered on August 20th, I believe it was, 1974?

A. I've read it, yes.

Q. And you understand that it covers black and Hispanic firemen who are presently employed or who may be employed in the future as a result of the Court order?

A. That's my understanding from reading it.

Turning -direct

Q Now, I would ask you if it is possible for the City of New Haven to set up a system of payroll deductions from those fireman only who are benefited by the Court order, those deductions to be used to pay Attorneys Rosen and Koskoff for legal services?

A It's my belief that that could be done.

Q And would you describe the system that the City could use to make those payments by deduction?

A The normal procedure for payroll deductions would be for the persons to have to pay amounts deducted from their pay to sign an authorization allowing the City to do this. That's not entirely necessary, but that's our accepted procedure.

In certain other instances, there are other ways of getting a deduction started. Once this is filed with us, the money would be deducted from the pay automatically through a standard computerized program. The check would be issued at the end of the payroll period to payee agreed upon in setting it up. And our payroll department would transmit that to the party who was the recipient of this.

Q The City presently pays other third parties by payroll deduction, do they not?

A Quite a few of them. We have 22 various types of checkoffs in the various departments and agencies of the City.

Q If the Court ordered that a payroll deduction system be

set up for all black firemen covered by its order, could you then proceed, even without authorization, to set up that payroll deduction system?

A. When you say without authorization, without a written authorization?

Q. Without a written authorization by the individuals.

A. I believe it could be done from a technical point of view.

Q. So that all you would need to set up a payroll deduction system with regard to these specific individuals covered in this suit would be the names and the amount of benefit per year that they have received as a result of the order, and a percentage that would be deducted from their pay each week, is that correct?

A. I understand that that could be done, yes, that's my belief.

MR. GARRISON: Thank you very much.

CROSS-EXAMINATION

BY MR. ROSEN:

Q. Sir, do you happen to know the approximate annual budget of the City of New Haven?

A. The approximate annual budget of the City of New Haven? In round figures, I think it was eighty-two, presently. The projected one is in the area of eighty-five million dollars.

Turning - cross

MR. ROSEN: No further questions.

THE COURT: Thank you, sir.

(Witness excused.)

THE COURT: I'll hear oral argument. Please keep in mind that I'veheard counsel in chambers on at least one occassion where we had a full discussion on attorneys' fees, and off and on throughout the litigation attorney fees would come up briefly. So, with that in mind, I'll hear counsel. Let the Court ask the questions.

I know your position with respect to the plaintiffs' primary position: that is, that you are unalterably opposed to their theory upon which they base their $250,000 fee for attorney fees.

Now, let's put that aside for the moment, although it is not aside in my own mind, but let's put it aside for the moment, and let's talk about their hourly claims. Aside from your position that one, that no fees should be awarded; two, that if fees should be awarded,the black firemen should pay them; the third position which I'm forcing you to argue at this point -- by that I mean assuming that you fail on every other ground and were down to my saying to you: assuming I'm going to award fees on an hourly basis, you have no great quarrel, no serious quarrel with the amount of hours, giveor take 50 or 60 hours?

MR. GARRISON: Correct.

THE COURT: What's your position with respect to the claim that if the Court awards fees on an hourly basis, that I believe there's a mention of $125 per hour, somewhere in the briefs, and then we've hadother testimony of around $75 an hour, some other courts have granted -- what's your position on the reasonableness of attorney fees at those levels per hour?

MR. GARRISON: Well, your Honor, I'd say, first, that if you were to talk about reasonbleness in terms of an hourly fee, you should look to the attorneys who prosecuted the action themselves. Attorney Rosen himself states that he, in federal court, charges $65 per hour, so I would assume that he believes that to be a reasonable fee.

I would state that -- as I did in my brief -- that a reasonable fee can mean a variety of things. In terms of federal public defender's work for indigent, it menas $30 an hour and $20 out of court, and no one has ever contested that schedule as being unreasonable. In fact, it is accepted by a large number of attorneys as a reasonable fee for doing that type of work. Some of that work is extremely difficult. It involves trial work and possibly appellate work.

Now, I also think that in terms of the reasonableness for this type of work, that your order in Jordan v. Fusari is certainly within the founds of reasonableness no matter which way you go. I wouldn't say it was unreasonably high. I don't

see how Attorneys Rosen and Koskoff could argue it is unreasonably low.

You have got the same type of experience from the practitioners, and the same kind of, in essence, complicated work. You cut down the hours there, which I don't think will happen here, but the same type of litigation that's involved, so I must say I've got no problem with the question of reasonableness.

I think that the question of the attractiveness of cases is an individual question for attorneys to consider from their own firms, and I do -- I do reject the suggestion that this type of case will not be attractive unless a hourly fee is quite high.

THE COURT: Well, there is, of course, a great deal to be said -- something that hasn't been argued here that's been argued in other cases, and I am not sure I've even mentioned it, but, of course, it's been argued, and perhaps under certain circumstances it might have merit, that there's an intangible benefit from representing a large group and being very successful, and that is that the average person within that group who might need a lawyerin the fugure, whether it be for an accident case or some other case, would logically think of the lawyer who represented him in a big class action where he was very successful.

Now, the state has argued that in other cases that I have had.

MR. GARRISON: I argued that, too, your Honor.

THE COURT: Did you?

MR. GARRISON: I had it -- when he talked about the availability of the client pool, I stated exactly the same thing that if you are going to be successful and conduct litigation successfully, you are going to increase your client pool, not decrease it. And I think that that's a benefit which certainly ought to be considered in this as an intangible, and you don't meet the high hourly pay as a result.

THE COURT: Yes. All right.

Now, just a comment, on the fees we pay under the Criminal Justice Act. I have been of the opinion that it is -- the fee that we do pay is a very good one considering that prior to the Act we didn't pay anything, but, on the other hand, I'm not sure that -- that most of the attorneys take that service as an obligation they feel to the Court, not that they're very happy about the thirty, twenty dollar fees that we pay. I'm sure that if I asked most of the attorneys to serve without any fee in Criminal Justice cases, they would have, but I'm not sure that they think they're being reasonable compensated.

MR. GARRISON: I don't suggest that. I'm suggesting that some courts have used it as a guideline, but I thinkthat perhaps it varies from place to place in the country, for one thing, and also it doesn't strike me that that's -- that is a really attractive fee. If your Honor is going to order fees,

I don't think that is attractive, but I do think that you are reasonable when you get to your Jordan v. Fusari schedule.

THE COURT: What was it in that case?

MR. GARRISON: $50 an hour in court, your Honor.

THE COURT: For the lead attorneys?

MR. GARRISON: Yes.

THE COURT: I don't think I ever gave $50 an hour to the legal -- for legal services rendered by law students.

MR. GARRISON: That's right, you didn't. You gave the law students only $3 an hour. I thought perhaps that was a little low.

THE COURT: Well, of course, that's what Mr. Sosnoff was -- Mr. Sosnoff was paying them 2.50 an hour.

MR. GARRISON: At any rate, you --

THE COURT: I gave them 50¢ for bookkeeping transactions. But he only paid them 2.50 an hour.

MR. GARRISON: Well, he deserved to get three.

You gave $50 an hour for court appearance, $35 an hour for research and related services, $25 an hour for administrative and similar services. You broke it down, type of service rendered as to the fee awarded.

THE COURT: Of course, one of the problems I had in that case, and I don't mean to distinguish it on the record, but I should put it in the opinion, but I did have many more attorneys involved for the handling of a single case. I mean at

times there were three and four and five attorneys coming into court representing one plaintiff, and so I had that problem.

All right. Let me hear from either Mr. Koskoff or Mr. Rosen. I know your positions fairly well on the contingency and on your overall arguement for $250,000 and so forth. But let's get down, and I will give you all the time you want -- but let's start backwards with the hourly rate. Didn't I read $125 somewhere?

MR. KOSKOFF: Yes, you very well may have. I don't recall which paper it is in, but I have had occasion to consult with firms at $125 an hour in this area, because they had -- it has been paid by defendants to me on a settlement basis, $125 an hour.

THE COURT: I don't mean to put you on the spot, and you don't have to answer if you don't want, but everyone who was on the stand today was on the spot.

What is Mr. Geyer came in and said, "Look, we can pay you. We are able to pay. We have a big organization and we can come up with the money, but we want to pay you on an hourly basis. How much would you charge us an hour to represent us through this lawsuit?"

Your next question is, "Do you have the finances to pay me?"

And if he answered, "Yes, we do have the money," what would you say at that point? Is that putting you on the spot?

MR. KOSKOFF: Assuming that I were going to accept that offer, which I might not do, anyways, because -- and I might advise Mr. Geyer in that situation that Congress has adopted a policy in cases such as this to have thewrong-doer, the discriminator pay in cases such as his, and you held --

THE COURT: What if he said, "What if we lose"?

MR. KOSKOFF: I could eliminate the contingency of my fee by charging him something which would be in the -- probably in the area of $75 an hour. Is what we would -- my ordinary billing rate would be, assuming that were on a weekly or monthly pay, probably a monthly basis, and it were as hours accrued.

THE COURT: I assume, plus expenses?

MR. KOSKOFF: Plus expenses.

THE COURT: Now, what if Mr. Geyer was really trying to tie you down, he says, "Well, Mr. Koskoff, you are worth $75 an hour, you are probably worth a lot more, but what if you hire a law student to do research? Would you fee still be $75 an hour?

MR. KOSKOFF: We would not charge the $75 an hour for the law student.

THE COURT: Would you tell him that?

MR. KOSKOFF: Yes, we would.

THE COURT: Or would you make it a straight $75 fee?

MR. KOSKOFF: We would charge $75 an hour for attorneys'

time, maybe slightly more for attorneys' time, but we would charge for law students' time, butnot on the same $75 an hour basis. We'd maybe charge $10 or $15 an hour.

THE COURT: Would you make any distinction about court time?

MR. KOSKOFF: Now, we would not. And we wouldn't make a distinction as to time spent going to court or researching time, providing it was all time that was necessary for prosecuting the case.

The only time in which we would vary that might be in the caseof a full day in court when we might give some reduction in the hourly rate to take into account that it was a full day of court, as the insurance companies do.

THE COURT: Now, you may have this in your brief, but I didn't quickly pick it up in the short time I had to look through the briefs.

What is your answer to the City's claim that it would be unfair, however I set fees, to tag the City with the intervenor's obstacle that was put into this case and which you had to overcome? They don't deny that. You handled the burden before me and you handled the burden before the Court of Appeals, but the City, in effect, says, "We, on the plaintiffs side, buy this time, and we did nothing to obstruct the settlement or the Court's order. Why should we pay?" What is your answer to that?

MR. KOSKOFF: Well, the answer to that, your Honor, is that it goes to the very theory of the award of attorneys' fees in a Title VII case as opposed to the award in a 1983 case such as Jordan and Fusari was. In a Title VII case, the one is -- one of fee shifting, and it's not based at all on fault. It's not based at all obstinacy as it was in Jordan and Fusari, it's based solely on a fee shifting in order to encourage plaintiffs to bring these cases.

So, although the time may -- there may have been more time spent because there was a flanking action by a third party, that's a very common in Title VII cases for third parties to come in with -- for there to be intervenors, and that inevitably makes the case a longer case to process and to prosecute, but it doesn't go to the very essence of the basis -- the basis of the fee shift in the first case, and so that's -- the fact that this intervention, attempted intervention occurred following the settlement, was of no moment. It could as easily have occurred early in the proceedings and delayed the proceedings as long or maybe even longer.

By defeating the attempted intervention, there are two things -- in addition to that, we've managed to do two things. One, we've cut down the amount of time that would have to be spent in prosecuting the case and, therefore, saved money for the City of -- additional time, and furthermore, as the Court has indicated, we have conferred a benefit on the City by abolishing

a discriminatory system, by changing it and by remedying it, which is something which has been recognized universally by the courts as being of a benefit to the whole city, so the City is benefiting and the City is paying for it.

I would like to address myself to just the issues -- one or two other points very briefly. One is -- as far as the plaintiffs -- as writeoff, checkoff, method for the plaintiffs. We would oppose that. It goes to two things, and I feel very strongly about them. One is that it is contrary again to the purpose of Title VII to have that happen, and the courts have since Newman versus Piggy Park Enterprises -- United States Supreme Court has recognized that where the statute confers benefits upon a party who is acting as a private attorney general and where the fees are statutory, the reason for that is to encourage plaintiffs to bring these cases, not so that after they bring a case and they're successful, someone is going to take away part of their pay, because that's what they deserved in the first place, they are the victims of discrimination, they should not be forced to pay for it.

Secondly, we feel that we rightfully, when these people came to us, told them that we would not charge them for our services, and there has been testimony to that, and they indicated to us that they couldn't afford our services. We told them that we wouldn't go against them because we believed, we felt, under the law, and we still feel, under the law, we were rightfully

entitled to be paid by those who had discriminated, not by the victims.

THE COURT: I see some other problems, too. I'm not judging the issue. I'll keep my mind open on it, but I suppose a black fireman could say, "Well, it's all well and good. You brought this lawsuit, and you did a great job, but I think I would have been hired without the lawsuit." After all, the City of New Haven was hiring blacks, and I am not sure that you are absolutely responsible for all 12 of the new men being hired. I would think that perhaps one of them, or more, could say, "Look, I would have been hired even without you."

Secondly, even assuming the 12 agree, what if one quits and another black comes on the force, do you deduct from that one? By reasoning as follows: well, if Mr. A didn't get on the fire department because of the lawsuit -- Mr. A got on the department because of the lawsuit, he quit, and they replaced Mr. A with Mr. B, therefore, Mr. B should pick up his debt.

It can get very complicated. I wouldn't even know how to do it. What should I do? Take 10 percent, 5 percent, 30 percent?

Then, as the lieutenants are appointed, do we start cutting them into the pay schedule? I'll keep my mind open on it, but I doubt very much if I am going to start ordering that. Even if I had the power, I'm not sure I can order money taken out of somebody's pay unless they agree.

MR. KOSKOFF: Many of these people haven't submitted to the jurisdiction of the Court because they haven't been hired yet, they're not even known, but I would like to point out one or two other things, just very briefly,again. One is that there have been many cases where fees have been settled, and there have been several hourly rates applies and the like, where hourly rates -- this recent case, that was given to the Court of $75 an hour, I'd point out that that's a rate given to an attorney who, as testified by Mr. Goldstein, heeded no inducement to take the case. It was an attorney who was out of law school for two years, or who had been in practice for two years, and whose job it was to prosecute cases like this, and who was funded for the purpose of prosecuting cases like that. Title VII anticipates the fee to be an inducement for people to prosecute cases and for attorneys to handle them.

And to point -- so that $75 an hour would be woefully inadequate, as Mr. Zeldes, I think, testified to, to induce a firm such as his or, indeed, I would submit, any major litigation firm to want to undertake a class action of this type.

Although the Court has pointed to some potential benefits that being successful in a case like this might have, I would submit that one can get those same benfits from being successful in more lucrative cases than in being successful in a case such as this.

I would also point to the fact that it is apparent to

me in handling of these cases, that Title VII has not been successful in the State of Connecticut for -- in terms of its enforcement. And I say that because -- one example of that is the fact that Title VII has now been in existence for some 12 years, and this is the first time a case has gotten to the point in a hearing in this District where this Court is having an opportunity to set fees in the case.

It certainly indicates either one of two things, or one of three things, maybe. One, that there is no employment discrimination in Connecticut, which the unemployment rolls will show is simply not so. There's vastly different unemployment in the black community and in the white community.

Two, that all of these cases are being settled very early, which is -- from our own experience, is generally not so, they've been going into court and not settled in the negotiating stage; or three, cases are simply not being handled by lawyers and are simply not being prosecuted, and I think that Mr. Zeldes' testimony has shed some light on the fact that here is a man who is probably the outstanding federal court litigation attorney in the State who has never handled a Title VII case, who was really virtually unaware of the existence of Title VII, and not because he's certainly not one of the more perceptive lawyers in the State, but simply because these are not cases which lawyers have been encouraged to take and been encouraged to look for, and it is in that spirit that we submit -- although we

believe that the amount we're asking for is a large amount, we feel it is necessary not only for ourselves, but to encourage other lawyers to come into this area and help solve the unemployment problem among the minorities.

MR. ROSEN: Your Honor, I want to add just two brief points. One is that you have been questioning what basis you should use for fee contingency or hour or some other basis. The cases seem to suggest that the proper approach is a combination of those, of the contingency and the hourly rate. Some of the cases do it explicitly, selecting a fair hourly rate, and then adding a premium for the quality of service or contingency.

We think that you should emphasize the contingencies in this case for the reasons that we've argued, but I just want to make the point that it's not a question of using one or the other, if you are using the multifactor approach, that all the cases suggest; and then the other point I want to make is -- in a way, it's repetitive, but I'm going to say it, anyway, because I think what your Honor does with respect to attorneys' fees in this case -- and I say this aware of all the risks of representing myself, which is really what Mr. Koskoff and I are in the unhappy position of doing is arguing something which is going to redound to our own benefit, but I'll say it, anyway -- but what you do with respect to attorneys' fees, I think, is going to have the most impact on the future of minority

employment, at least in this District, of anything that you have done in this entire case, and that's for the very simple, practical reason that if you give a generous, high fee award, there's going to be more enforcement, there's going to be more cases brought; and if you are giving a moderate award, the cases are going to be brought only by -- as far as major litigation firms, Mr. Koskoff and his firm, are, as this case shows, a very unusual breed in the District of Connecticut -- and my office couldn't have gotten involved in the case if his office wasn't there to pay the costs, that's certainly true, and I think that what's going to be involved is that major Title VII litigation is going to depend on the occasional charity of a law firm whose business is really elsewhere, and that I think would be most unfortunate, and not what Congress envisioned.

MR. GARRISON: Your Honor, as an individual practitioner as well as representing the City here, I have to agree with the remarks that counsel have made here with regard to the importance of enforcing Title VII mandates, and I don't mean by any of my remarks to downgrade the importance of eradicating racial discrimination in the District of Connecticut.

Now, not only is that themost important thing for your Honor to look at in the way that this case seems, as distinguished from many other cases, is that in this case there is a state statute involved which must guide your Honor's discretion, and that was cited in my memorandum in the statute that is proof

of claims against municipalities, Connecticut General Statute Section 71-11, and it requires no commssion, discount. bonus award or present will be received on account of services rendered tothe Town or City.

The argument -- the only logically consistent argument that the plaintiffs' counsel make here is that they have rendered services on behalf of the City. That's how they justify their contingency, so they fall under the statute, it seems to me. If they fall under this statute, they unfortunately are going to have to resign themselves to the fact that they can't expect a bonus, theycan't expect a contingency, they can't expect a premium over reasonable hours.

Now, that's not to say that that kind of expectation may not be true in a suit against a private employer. It may well be. This statute only regards municipalities, and it may put the plaintiffs in a different situation than in any other type of Title VII litigation. But I must call your attention to that statute as themost important single element which guides your discretion in this case, because it is a state statute, it relates specifically to municpalities, it's not in conflict with the federal statute. The federal statute only requires you to use your discretion.

Now, Mr. Koskoff had talked earlier about the purpose of the attorneys' fees section in Title VII being fee shifting, and I think the cases are pretty clear that that is one of the

purposes. However, in this case, fees can be shifted not only to the City of New Haven, but they can be shifted to interveners. The FPSCS -- I forget what that stood for, but the Firefighters Committee to Preserve Civil Service -- it can be shifted to that organization, it's pretty truethat that organization may not have all the funds to pay it, but the purpose of fee shifting is not to guarantee an insurance policy for attorneys' fees to prevailing attorneys. The purpose of fee shifting is to shift to the prevailing party under the terms of the statute, and after this case was settled by your order, there is no prevailing party after that. These interveners did not affect a prevailing party, andin terms of this settlement, both the City and the Firebirds were the prevailing party. They both fought together on the appeal to uphold the Court's order, so they were both the prevailing party. You simply can't award fees on that appeal against the City of New Haven, although they can be justifiably awarded, it seems to me, against this committee who intervened.

Now, the argument that the City would have hired blacks, anyway, which your Honor made, I think is well taken, and, frankly, is also -- speaks against the contingency argument.

THE COURT: Don't misinterpret that remark, and I am not sure I indicated that the City would have done what it had to do under the Court order if this suit wasn't brought. I'm saying perhaps one black fireman would step forward and say,

"Look, I like what you did, and I appreciate what you did, but I wasn't a party to the lawsuit, and I think I would have been hired even without it, because I have the qualifications." And my point was what if one stepped forward and said that, who is going to decide if he would not have been hired but for the lawsuit?

And then -- what do you suggest with your method? Let's assume we go from $250,000 down to $5,000 in attorneys' fees. What would you propose that I do? Take a figure and order the City to take that amount out of each of the firemen's pay, and assuming that another 12 are hired next year and another three lieutenants are made, how is that going to work out as a practical matter?

MR. GARRISON: What happened in the plaintiffs' affidavit from their economist was that a benefit was ascribed to the services that the attorneys provided. The benefit with regard, for example, to firemen who are hired, and then promoted to lieutenant, was the difference in pay scale between the -- their initial position and their new position. The benefit to new hirees was the difference between the market generally for blacks and the firemen market, and it seems to me that that's the figure that you could use, and it also seems to me that whereas there may be some inequity in the first place against the one or two firemen who speculatively would have been hired, all right, there may be some inequities as regard them, but

balance the equities, it's more equitable to simply follow the traditional rules that litigants pay their attorneys, and that the point in the brief, if you wanted to use the numbers, I would take a percentage of those increments -- their economist has figured out the increments -- we've contested -- of those -- I would take a percentage of those, you took a percentage of those in the Jordan case in your first decision when you took an estimate of the employment compensation that was released to the plaintiffs in that case. I would suggest the same thing -- I haven't suggested a percentage because it's in your Honor's discretion,, but that's the way I would suggest you do it.

Also -- let me also point out that with regard to the case that was submitted to your Honor today -- in that case, the lead attorney, a black woman -- I can't remember her name -- received a fee of $35 an hour, so the talk about $75 an hour is perhaps a little bit misleading, because the trial attorney received 35 That was a consulting attorney who received 75, so I don't think you can take that case to mean one thing or another, particularly.

I still feel that, frankly, your fee scale in Jordan is realistic, if the City is to be charged lawyers' fees.

Our whole argument, basically, your Honor, is that the plaintiffs have got to be consistent here, one way or the other. They can't be a private attorney general under Alieskin any longer. If they're arguing the Common Fund, you have to

figure out what the Common Fund is. If you are going to take a percentage from the Common Fund, let them take the percentage of the Common Fund, it would be the fund of extra pay that the firemen received, and they can take a percentageof that fund, and they can do it by payroll deductions, as was testified here. That would be consistent with the Comon Fund theory, and the only other theory that exists, your Honor, is an hourly pay schedule, for services performed.

So if the Common Fund theory doesn't apply, why, then, it is going to be reasonable hours that does apply, and what the reasonable hours are, again, are for your discretion and your own determination, but I submit that you can't get this amalgam of both. You have to do one or the other. It's not fair to the City to be hit with the worst of both worlds: that is, to take part of a contingent fee theory and part of an hour rate theory, put them together, just to make the attorneys for the plaintiffs a little bit wealthier, and I hate to put it that way, but that's really what it amounts to, unless you are going to be consistent in your theories each way, and I thihk our brief has pointed out what is the Second Circuit's interpretation of consistencies in these areas.

So I thank you very much.

THE COURT: All right. I'll reserve decision.

Incidentally, I won't be getting to this for a bit. So if you have anything you like to putin writing, another

thought comes to mind, don't hesitate to do it within the next 10 days. And, of course, please give notice to the other side. If the other side wants to respond, feel free to.

- o 0 o -

I N D E X

Witness:	Direct	Cross	Redirect	Recross
Barry L. Goldstein	4	24	30	
Jacob D. Zeldes	33	39		
Earl Daniel Geyer	46	51		
Walter Turning	57	59		

FILED
NOV 3 4 12 PM '76
U. S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

FIREBIRD SOCIETY, et al, Plaintiffs,	:	
v.	:	CIVIL NO. 15,876
MEMBERS OF THE BOARD OF FIRE COMMISSIONERS, et al, Defendants.	:	

RULING ON PLAINTIFFS' MOTION FOR AN AWARD OF COUNSEL FEES AND COSTS

This suit, pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, was commenced on October 5, 1973, challenging the constitutionality of the hiring and promotional procedures with respect to minority groups in the New Haven Department of Fire Services ("Department"). The plaintiffs were the Firebird Society of New Haven, Inc. ("Firebirds"), an organization composed of all the black fireman in the Department, several individual members of that organization, and certain past and prospective minority applicants to the Department. The defendants include the New Haven Board of Fire Commissioners, the Civil Service Commission of the City of New Haven, the Fire Department and its Chief, and the City of New Haven and its Mayor. Upon motion, 17 white Captains in the Department who had been appointed but not assigned to duty were permitted to intervene as defendants.

Soon after the commencement of this action, the Court and counsel joined in an intense, lengthy and concerted

effort to resolve this highly complex and sensitive case. After several court hearings and 23 chambers conferences, all the issues, except attorneys' fees, were eventually settled and a final decree entered on August 30, 1974. However, the case was not laid to rest at that point. Subsequently, a group identified as the Firefighters' Committee To Preserve Civil Service, Inc. was organized to intervene and challenge the settlement of this lawsuit. Additional proceedings ensued and after the Court denied relief to the applicants for intervention, 66 F.R.D. 457 (D. Conn. 1975), an appeal was prosecuted to the Second Circuit where the Court's decision was affirmed. Firebird Society, Inc. v. New Haven Board of Fire Commissioners, 515 F.2d 504 (2 Cir. 1975) (per curiam).

The only remaining question concerns the amount of attorneys' fees to be awarded under 42 U.S.C. § 2000e-5(k). A hearing was held and comprehensive briefs have now been filed. Cf. Thomas v. Honeybrook Mines, 428 F.2d 981, 988-989 (3 Cir. 1970), cert. denied, 401 U.S. 911 (1971); Jordan v. Fusari, Civil No. 15,671 (D. Conn. August 25, 1975). To support their request for $250,000 in fees, counsel for plaintiffs rely on the following factors: the benefits conferred on the named plaintiffs and the class represented, the nature of the work performed and the skill with which it was performed, the time and effort expended, and a contingency fee which is claimed to be merited under the circumstances. The defendants, on the other hand, contend that the plaintiffs should pay their own lawyers' fees or, alternatively, if attorneys' fees are assessed, the award should not exceed the

reasonable value for actual working hours less time spent in the course of opposing the aforementioned motion to intervene before this Court and on appeal.

I

The first argument advanced by the defendants is rejected. There is little doubt that the plaintiffs were the prevailing parties in this litigation which permits the Court, pursuant to 42 U.S.C. § 2000e-5(k), in its discretion, to award "a reasonable attorney's fee as part of the costs." See also Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240, 261-263 (1975); Evans v. Sheraton Park Hotel, 503 F.2d 177, 186-187 (D.C. Cir. 1974). Collection of fees from the offending municipal officials and bodies is particularly appropriate here. Plaintiffs secured extensive relief in the areas of recruitment, hiring, and promotion of minorities in the Department, thereby "vindicating a policy to which Congress gave the highest priority, the elimination of racial discrimination." Fort v. White, 530 F.2d 1113, 1117-1118 (2 Cir. 1976); cf. Carrion v. Yeshiva University, 535 F.2d 722, 727 (2 Cir. 1976). The fact that the plaintiffs achieved these significant results by virtue of a negotiated settlement rather than a trial on the merits alters neither their notable success in the outcome nor their status as the prevailing parties under the statute. Parker v. Matthews, _____ F. Supp. _____ (D. Col. 1976); 44 U.S.L.W. 2496 (April 26, 1976; cf. Torres v. Sachs, _____ F.2d _____ (2 Cir.), slip op. 4431, 4434-4435 (June 25, 1976). Thus, an award of attorneys' fees in the instant case would be an equitable and just application of judicial discretion. Cf. Jordan v. Fusari, 496 F.2d 646,

650-651 (2 Cir. 1974); see also Mills v. Electric Auto-Lite Co., 396 U.S. 375, 393-394 (1970); Lindy Brothers Builders, Inc. v. American Radiator and Standard Sanitary Corporation, 487 F.2d 161, 164-166 (3 Cir. 1973).

II

At best, it is a difficult task for the Court to determine the value of attorneys' fees when the issue is contested. The function becomes even more troublesome when the objections are focused upon the services rendered by two experienced, qualified members of the trial bar. From the outset, the plaintiffs have been represented by Michael P. Koskoff and David N. Rosen, both of whom are skilled, seasoned advocates who enjoy the highest reputation in the legal community. In evaluating the fee requests, the factors placed on the scale by the Court include: (1) time and labor spent; (2) counsel's experience and reputation; (3) the magnitude and complexity of the litigation; (4) the amount recovered; (5) the attorneys' "risk of litigation;" and (6) awards in similar cases. See e.g., City of Detroit v. Grinnell Corporation, 495 F.2d 488, 468-474 (2 Cir. 1974); Brandenburger v. Thompson, 494 F.2d 885, 890 n.7 (9 Cir. 1974); Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717-719 (5 Cir. 1974); Stanford Daily v. Zurcher, 64 F.R.D. 680 (N.D. Cal. 1974).

In addition, a complicating issue concerns whether counsel's efforts in opposing the motions of the applicants for intervention before this Court and on appeal are proper items for payment by the defendants. There is little question that counsel expended a great deal of time in the

successful defense of this phase of the case. Yet it would appear to be fundamentally unfair that the defendants absorb this cost of litigation. The proceedings in question developed after the initial disputes in the main suit were resolved by the diligent efforts and commendable cooperation of all the attorneys, including defense counsel. See 66 F.R.D. 457. The defendants, as well as the plaintiffs, vigorously opposed the attack upon the settlement decree of August 30, 1974, and in this Court and on appeal they sought to sustain the negotiated settlement. In effect, with respect to this portion of the case, both parties to the original suit were "prevailing parties." Thus, an award of attorneys' fees for the services rendered by plaintiffs' lawyers on the post-settlement proceedings would not be warranted. Cf. Stolberg v. Members of Bd. of Tr. for State Col. of Conn., 474 F.2d 485, 489-491 (2 Cir. 1973).

Applying these general standards to the present application, the Court notes, at the outset, that the core issues in the litigation were decided without lengthy and complex l tigation. In the early stages of the lawsuit, several of the crucial concerns of the plaintiffs were resolved due to notable concessions by the defendants. Therefore, the Court must weigh in the balance the fair recovery for legal services, in the strict sense, and administrative, procedural and clerical work performed by counsel. Moreover, the Court has carefully inspected and considered counsel's time sheets, all the moving papers, the defendants' objections including those relating to the duplication of effort between the two attorneys, and the necessary exclusions of time attributed to

the post-settlement proceedings. Finally, in its determination, the Court distinguishes between time spent in court and time attributed to research and related services.

Accordingly, the Court awards Attorney Rosen $9,370.00 for 58 hours of services at $50.00 per hour, 132 hours at $35.00 per hour, and 74 hours at $25.00 per hour. Attorney Koskoff is granted $4,860.00 computed at 54 hours of services at $50.00 per hour, 26 hours at $35.00 per hour, and 50 hours at $25.00 per hour. In addition, the sum of $1,493.60 is awarded for counsel's out-of-pocket expenses.

III

In summary, attorneys' fees and other payments are ordered as follows:

Attorney David N. Rosen	$9,370.00
Attorney Michael P. Koskoff	4,860.00
Expenses	1,493.60
Total:	$15,723.60

SO ORDERED.[1/]

Dated at New Haven, Connecticut, this 3rd day of November, 1976.

Robert C. Zampano
United States District Judge

1/ A time schedule has also been submitted by Attorney W. Paul Flynn who represented the white Captains of the Department who intervened as defendants in this action. A memorandum in support of the application for attorney's fees has been filed and the Court fails to understand from whom Attorney Flynn feels entitled to receive an award. Through his conscientious representation of the intervening defendants, Attorney Flynn's participation in settlement discussions certainly influenced the nature and extent of the remedial actions agreed to by the original parties, but the intervening defendants did not by virtue of this participation become a "prevailing party."